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नई दिल्ली, शनिवार, दिसम्बर 25, 1993/पौष 4, 1915
NEW DELHI, SATURDAY, DECEMBER 25, 1993/PAUSA 4, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (III) PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 16 नवम्बर, 1993

शा. प्र. 126:—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13 के अधिनियम (1) और (2) के उपबन्धों के अनुसरण में निर्वाचन आयोग यह निर्देश देता है कि उनकी तारीख 7 सितम्बर, 1992 की अधिसूचना सं. 508/तमिलनाडु/92 में निम्नलिखित संशोधन किए जाएंगे, अर्थात्:—

(i) क्रम सं. 5 के सामने स्तम्भ (1), (2) और (3) के नीचे निम्नलिखित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी:—

1	2	3
5. दक्षिण अर्कोट जिल्लाधिकार	कलक्टर, दक्षिण अर्कोट जिल्लाधिकार	दक्षिण अर्कोट जिला जल्लाधिकार

(ii) क्रम सं. 5 के बाद क्रम सं. 6 के रूप में निम्नलिखित प्रविष्टियां जोड़ी जाएंगी:—

1	2	3
6. विल्लपुरम रामासामी, पादेयच्यार	कलक्टर, विल्लपुरम रामासामी पादेयच्यार	विल्लपुरम रामासामी पादेयच्यार जिला

(iii) वर्तमान क्रम सं. 6 से 22 का 7 से 23 के रूप में पुनर्भरण किया जाएगा।

[सं. 508/तमिलनाडु/93]
प्रदेश से,
बलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 16th November, 1993

O.N. 126.—In pursuance of the provisions contained in sub-sections (1) and (2) of section 13AA of the Representation of the People Act, 1950 (43 of 1950), the Election Commission directs that the following amendments shall be carried out in its Notification No. 508/TN/92 dated 7 September, 1992:—

(i) For the existing entries under column (1), (2) and (3 against Serial No. 5 of the following shall be substituted:—

1	2	3
5. South Arcot Vallalar	Collector of South Arcot Vallalar	South Arcot Vallalar District

(ii) After Serial No. 5, following entries shall be inserted as Serial No. 6:—

1	2	3
6. Villupuram Ramasamy Padayatchiar	Collector of Villupuram Ramasamy Padayatchiar	Villupuram Ramasamy Padayatchiar District

(iii) Existing Serial Nos. 6 to 22 shall be renumbered as 7 to 23.

[No. 508/TN/93]

By Order,

BALWANT SINGH, Secy.

नई दिल्ली, 26 नवम्बर, 1993

घा. घ. 127:--निर्वाचन आयोग 1991 की निर्वाचन प्रज्ञा स. 2 और 6 में उच्च न्यायालय, कर्नाटक के तारीख 19 अप्रैल, 1993 वाले आदेश को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/कर्ना.-लो. म./2 और 6/91]

आदेश से,
बलवंत सिंह, सचिव

New Delhi, the 26th November, 1993

O.N. 127:--In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), of the Election Commission hereby publishes the order of the High Court of Karnataka dated 19th day of April, 1993 in Election Petition No. 2 and 6 of 1991.

[No. 82/KT-HP/2&6/91]

By Order,
BALWANT SINGH, Secy.

IN THE HIGH COURT OF KARNATAKA AT
BANGALORE

Dated this the 13th, 15th, 16th & 19th April 1993
Before

THE HON'BLE MR JUSTICE S. RAJENDRA BABU
ELECTION PETITION NOS. 2 & 6/1991

Between
Sri C. Narayanaswamy
s/o Shankarappa,
aged 42 years
No. 196, 2nd Main Road
K.E.B. Colony,
Geddalahalli,
Bangalore-560 094.

Petitioner in E.P. No.
2/1991

(By Sri K. Channabasappa, Advocate)

Smt. Pramila Nesargi
w/o M.S. Nesargi,
major
No. 844, 100 Feet Road,
Indiranagar
Bangalore-560 038.

Petitioner in E.P. No.
6/1991

(Party in Person)

And

1. Sri C.K. Jaffer Shariff
s/o Abdul Kareem
major
H. No. 46, Haynes Road
Bangalore-560 005
Minister for Railway
Government of India
Rail Bhavan,
New Delhi-01

Respondent-1 in
E.P. 2 & 6/1991

2. Smt. Pramila Nesargi
w/o M.S. Nesargi
major

No. 844, 100 Feet Road
Indiranagar,
Bangalore-38.

Respondent-2 in
E.P. 2/1991

3. Sri C. Narayanaswamy
s/o Shankarappa
aged 42 years
No. 196, 2nd Main Road
K.E.B. Colony
Geddalahalli
Bangalore-560 094

Respondent-2 in
E.P. 6/1991

4. V. Aswathappa
s/o Dyavananjappa
major
Kodigehalli Post
Bangalore-560 064

Respondent-3 in
E.P. 2 & 6/1991

5. M. Krishnappa
s/o Munimanjappa
major
Gundur
Bidrahalli Hobli
Bangalore South Taluk.

Respondent-4 in
E.P. 2 & 6/1991

6. B.M. Krishna Reddy
s/o P. Muni Reddy
major
Byrathi village
Doddgubbi Post
Bidrahalli Hobli
Bangalore South Taluk.

Respondent-5 in
E.P. 2 & 6/1991

7. C.J. Khader Nawaz Shariff
s/o C.K. Jaffer Shariff
No. 46, Hains Road
Bangalore 560 005.

Respondent-6 in
E.P. 2 & 6/1991

8. Gaddam Obalesh
major
No. 427, S.N.T. Street
M.V. Garden
Ulsoor
Bangalore.

Respondent-7 in
E.P. 2 & 6/1991

9. H.K. Chandra Shekar
s/o H. Krishna
major
639/1, I Main Road
I Stage Indiranagar
Bangalore 560 038.

Respondent-8 in
E.P. 2 & 6/1991

10. D. Jairam
s/o Dorai
major
10/80 Ashoknagar
Arabic College Post
Bangalore 560 045.

Respondent-9 in
E.P. 2 & 6/1991

11. Narayanappa
s/o Mattappa
major
Isthur
Hoskote Taluk
Nandagudi Post.

Respondent-10 in
E.P. 2 & 6/1991

- | | | | |
|--|-------------------------------------|---|-------------------------------------|
| 12. B.K. Narayanaswamy
s/o Krishnappa
major
Balagere
Varthur Hobli
Bangalore South. | Respondent-11 in
E.P. 2 & 6/1991 | 21. H.V. Mohan
s/o H. Venkataramaniah
major
Advocate
No. 12 Hesarhatta
Bangalore-88. | Respondent-20 in
E.P. 2 & 6/1991 |
| 13. R. Panneer Selvan
s/o N. Rungaswamy
major
7/1 Long Ford Road Cross
B. Nanjappa Circle
Bangalore 560 027. | Respondent-12 in
E.P. 2 & 6/1991 | 22. S.M. Raju
s/o Somanahallaiah
major
No. 319 1 Cross
N.B. Layout
Thomas Town Post
Bangalore 560 084. | Respondent-21 in
E.P. 2 & 6/1991 |
| 14. Prabhuraju
s/o Anjinaiyappa
major
No. 3 Hutting Colony
Indiranagar
Bangalore-38. | Respondent-13 in
E.P. 2 & 6/1991 | 23. L. Lakshmaiah
s/o Lakshminarayanappa
major
Doot No. E-108
East II Lan, ITI Colony
Doorvaninagar
Bangalore-16. | Respondent-22 in
E.P. 2 & 6/1991 |
| 15. B. Puttaraju
s/o late Basavarajashekaraiah
major
8, Girls Highschool Road
Chikkaballapur
Kolar District. | Respondent-14 in
E.P. 2 & 6/1991 | 24. M.R. Vijayakumar
s/o Rudrappa
major
No. 40, 29th Cross
7th Block Jayanagar
Bangalore. | Respondent-23 in
E.P. 2 & 6/1991 |
| 16. Fayaz Pasha
s/o Ameerjahn
major
No. 64 Old Korcheerpalya
C. Street
Shivajinagar
Bangalore 560 051. | Respondent-15 in
E.P. 2 & 6/1991 | 25. P. Venkatesh
s/o Muniyappa
major
No. 247, Panathoor
Varthur Hobli
Bangalore-87. | Respondent-24 in
E.P. 2 & 6/1991 |
| 17. Byataraja Gowda
s/o Byataraya Godwa
major
Sree Byatarayaswamy Nilaya
Sree Byraveshwara Nagar
C.B. Colony
Nagarbhavi Main Road
Mudalpalya
Bangalore-72. | Respondent-16 in
E.P. 2 & 6/1991 | 26. Dr. D.R. Venkatesh Gowda
s/o Rame Gowda
major
No. 766, Gowripet
2nd Cross
Kolar 563 101. | Respondent-25 in
E.P. 2 & 6/1991 |
| 18. Mallikarjuna
s/o late Poojappa
major
No. 24 Kaval Byrasandra
R.T. Nagar Post
Bangalore-32. | Respondent-17 in
E.P. 2 & 6/1991 | 27. Shivaramanna
s/o Kariyappa
Kannada Chaluvali Kendra
Koota
No. 9, Cubbonpet
Bangalore. | Respondent-26 in
E.P. 2 & 6/1991 |
| 19. Mahboob Be
w/o Mohamad Yusuf
major
No. 50 7th Cross
Muslim Colony
Raheemkhan Road
D.J. Halli
Bangalore-45. | Respondent-18 in
E.P. 2 & 6/1991 | 28. Sripad Rao
s/o Appaji Rao
major
159 Rangaswamy Temple
Street
Bangalore 560 053. | Respondent-27 in
E.P. 2 & 6/1991 |
| 20. K.K. Misra
s/o Bacharam Misra
major
107/2 Coles Road
Frazer Town
Bangalore 560 005. | Respondent-19 in
E.P. 2 & 6/1991 | 29. M.A. Shujath Pasha
s/o A. Abdus Samad
major
No. 140/2, Jabbar Block
Palace Guttahalli
Bangalore-560 016. | Respondent-28 in
E.P. 2 & 6/1991 |

30. K. Satyanarayana
s/o R. Krishna Murthy
major
475 Krishnarajapura
Bangalore 560 036.

Respondent-29 in
E.P. 2 & 6/1991

31. M. Sundara Murthy
s/o C. Maslimani
major
91/4 Gayathri Extension
Kowdanahalli
Ramamurthynagar
Bangalore 560 016.

Respondent-30 in
E.P. 2 & 6/1991

(Shri G.V. Shantharaju, Shri D.N. Nanjunda Reddy and
Shri H.D. Amaranathan, Advocates for R-1 in E.P. 2
of 1991.)

(Smt. Geetha Menon, Smt. Archana Vishwanath and
Smt. Shobha Bhavi Katti, Advocates for R-2 in E.P. 2
of 1991)

(Shri S. Siddappa, Advocate for R-4 in E.P. 2/1991)
(Shri S.N. Ravindra and Shri Swamy Shivaprakash
Advocates for R-3, R-7 and R-22 in E.P. 2/1991)

(Shri V. Gopala Gowda, Advocate for R-9, R-11, R-12,
R-17, R-18, R-29 & R-30 in E.P. 2/1991)

(Shri K.K. Misra, Respondent-19 in E.P. 2/1991 in person)

(Respondents 5, 6, 8, 10, 13 to 16, 20, 21, 23, 24, 25 to 28 in
E.P. 2/1991 are ex parte vide Court Order dated 2-6-1992).

(Shri G.V. Shantharaju, Shri D.N. Nanjunda Reddy
Advocates for R-1 in E.P. 6/1991)

(Shri K. Channabasappa, Advocate, for R-2 in E.P. 6/1991)

(Shri S.N. Ravindra & Shri Swamy Shivaprakash, Advocates
for R-3 in E.P. 6/1991)

(Shri S. Siddappa, Advocate, for R-4 in E.P. 6 of 1991)

(Shri N. Nagaraju & Shri S. Ramaiah, Advocates for R-24
in E.P. 6/1991)

(Shri V. Gopala Gowda, Advocate, for R-7, R-9, R-11, R-12,
R-17, R-18, R-29 & R-30 in E.P. 6 of 1991)

(Shri K.K. Misra, Respondent-19 in E.P. 6/1991, in person)
(Shri T.P. Sathish Chandrakumar, Advocate for R-15 in
E.P. 6/1991)

(Respondents 5, 6, 8, 10, 13, 14, 16, 17, 20 to 23 & 25 to 28 in
E.P. 6/1991 are ex parte vide Court Order dated 17-7-1992)

Election Petition 2 of 1991 is filed under Section 81 of the
Representation of the People Act, 1951 by petitioner, a candi-
date of 1991 Parliamentary Election to the Lok Sabha No. 12,
Bangalore North Lok Sabha Constituency held on 15-6-1991
through his counsel praying to accept this petition and dec-
laring the election of the first respondent from No.12 Bangalore
North Lok Sabha Constituency as void under Section 100(1)
(b) of the R.P. Act 1951; to declare the election of 1st respon-
dent as void and that the result of election so far as it concerns
the returned candidate has been materially affected and further
declare the petitioner as duly elected from No. 12 Bangalore
North Lok Sabha constituency after the recount of the ballot
papers, etc.

Election Petition 6 of 1991 is filed under Section 81 of the
Representation of the People Act, 1951 by the petitioner, a
candidate at 1991 Parliamentary Election to the Lok Sabha

No. 12 Bangalore North Lok Sabha constituency held
on 15-6-1991 through her counsel praying to declare that the
declaration of result of respondent-1 from No. 12 Bangalore
North Parliamentary constituency as null and void; to declare
that respondent-1 has committed malpractices under Sections
123(1), 123(6), 127(7) and 123(8) read with Section 100(1)(b)
and 100(1)(d)(ii) of the R.P. Act; to declare that the result of
election of respondent No. 1 as having been materially affected
under Section 100(1)(d)(iii) and (iv) of the R.P. Act and to
name respondent-1 as having committed corrupt practice
under Section 98 of the R.P. Act and such other persons who
have committed the corrupt practice, etc.

These petitions coming on for arguments this day, the Court
made the following :

ORDER

The petitioners in each of these two cases contested the Lok
Sabha Election from Bangalore North Lok Sabha constituency
in which respondent-1 was declared to have been elected.
Since these two petitions have been filed to assail election of
respondent-1, they are tried together permitting parties in either
petition to participate in the trial of each of the cases. Hence
this common order.

2. The petitioner have called in question the election of
respondent-1 in either case, on the following grounds, viz.,

- (i) Bribery, that is, large-scale free feeding of the electorate
which is violative of Section 123(1)(A) of the Representa-
tion of the People Act, 1951 (hereinafter referred to
as the Act);
- (ii) Incurring or authorising to incur expenditure in contra-
vention of Section 77 of the Act;
- (iii) Obtaining or procuring the services of Gazetted Officers
of the Government as contained in several paragraphs
of the petitions.

There are also allegations of violation of the provisions of
the Constitution of India, the Act, the Rules and orders or
instructions issued thereto in the matter of conduct
of elections in general and in particular as to
polling and counting and even in transmission of ballot
papers. It is alleged that the polling or counting agents
of the petitioners were not allowed entry into the
polling stations or the counting centres in time though they
were entitled to have entry in to the polling and counting
stations. I shall refer to these pleadings in detail as and when
it becomes necessary. One glaring feature in these cases is
that the election result was announced by the Returning
Officer on 16-6-1991 and a communication thereof was also
flushed by wireless to various authorities and the media as
detailed in Schedule 'A' appended to Election Petition 2 of
1991. In that communication it was notified as under:

I. VOTING Statistics (Ex. P-11 in E.P.2 of 1991):

(a) Total number of voters	13,33,426
(b) Total number of voters voted	6,20,518
(c) Total number of voters in Shantinagar segment	1,37,415
(d) Total number of voters voted in Shantinagar segment.	46,042

II. Result as sent by wireless message: (Ex. P.2 in E.P. 2 of 1991)

(a) Total number of voters	13,33,426
(b) Votes polled	8,32,465
(c) Votes rejected	15,556
(d) Votes polled in favour of Sri C.K. Jaffer Sharief	3,52,047

(e) Votes polled in favour of Sri. C. Narayanaswamy	2,43,427
(f) Votes polled in favour of Smt. Pramila Nesargi	2,01,315
III. Result as sent to D.P.A.R.: (Ex. P-68 in E.P.6 of 1991)	
(a) Total number of voters	13,33,426
(b) Total votes polled	6,17,388
(c) Total valid votes polled	6,04,640
(d) Total votes rejected	12,748
(e) Votes polled in favour of Sri C.K. Jaffer Sharief	2,52,272
(f) Votes polled in favour of C. Narayanaswamy	1,92,955
(g) Votes polled in favour of Smt. Pramila Nesargi	1,45,074
IV. Results as per Form No. 20E: (Ex. P.3.)	
(a) Total number of voters	13,33,426
(b) Total number of votes polled	6,04,604
(c) Total number of votes rejected	12,748
(d) Votes polled in favour of Shri Jaffer Sharief	2,52,272
(e) Votes polled in favour of Sri C. Narayanaswamy	1,91,955
(f) Votes polled in favour of Smt. Pramila Nesargi	1,45,074

It is contended that the total number of electors being 13,33,426, the votes polled being 6,04,604 and 12,748 votes having been rejected and in view of discrepancy in the number of votes polled by each of the candidates or the total number of votes between three sets of communications or documents issued by the authorities the petitioners suspect that there must have been large-scale rigging of election and on that basis proceeded to work out their respective cases. On these grounds the petitioners have filed these petitions challenging the election of respondent-1.

Before I embark upon consideration of the pleadings, issues and evidence in these cases, it is necessary to notice the state of law and interference in election.

3. There is a wellknown adage that all is fair in love and war. Political adventurers who contest elections would like to include 'Elections' too in that adage. In order to control this kind of adventurism on the part of candidates contesting an election, the Act is enacted governing the conduct of elections. Whatever may be the position in regard to conduct of elections in other democracies, so far as India is concerned the Act is a self-contained code dealing with various aspects in matters of conduct of elections and disputes arising therefrom. The Supreme Court had occasion to consider the scope of investigation when an election is challenged before Courts. In Bhabhi vs. Sheo Govind and others (AIR 1975 SC 2117) it has been held that it is only in the manner provided under the Act that an election can be called in question and on grounds mentioned in Section 100 of the Act. Indeed, the Supreme Court reiterated this position in Arun Kumar Bose vs. Mohd. Furkan Ansari and others (AIR 1983 SC 1311) and referring to its five Judge Bench decision rendered earlier in the case of Jagan Nath vs. Jaswant Singh (AIR 1954 SC 210) it was observed that :

"the general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power."

(underlining added)

Again in Jyoti Basu and others vs. Debi Ghoshal and others (AIR 1982 SC 983 at pp. 986-987) the Supreme Court stated thus :

"A right to elect, fundamental though it is to democracy is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election and therefore subject to statutory limitation."

Proceeding further it was observed therein that :

"The entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951, and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute."

Reiterating this position once again in Arun Kumar Bose's case (Supra) their Lordships of the Supreme Court observed that they are bound by the decision of the larger Bench and they are in agreement with what had been said in Jyoti Basu's case. With this backdrop I may now approach the problem presented for my consideration in these two election petitions. In Rahim vs. Kurshid (AIR 1975 SC 290) it is observed as follows :

"9. An election once held is not to be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded."

Thus, except on strong grounds and for cogent reasons, no election can be upset. Bearing in mind the above dicta of the Supreme Court I now proceed to consider the issues raised in these cases.

4. At an earlier stage respondent-1 had filed I.A. No. VI in Election Petition 2 of 1991 and I.A. No. V in Election petition 6 of 1991 to strike out certain pleadings in the petitions. So far as Election Petition 2 of 1991 is concerned, I have made an order on 23-4-1992 striking off certain paragraphs as in my opinion they did not contain the necessary material facts or particulars to call upon the respondents to file their written statement in respect thereto. In regard to other paragraphs objected to by respondent-1, considering the nature of the allegations made I had put off the consideration of the same to a later date and I did not express any opinion one way or the other on the tenability of the submissions made. Again at the stage of framing of issues respondent-1 reiterated these contentions. Once again I had put off the consideration of the same by framing the specific issue relating to the question raised by respondent-1.

In the light of these two orders made by me there was no argument addressed on behalf of petitioner in Election Petition 6 of 1991 and bearing in mind those contentions raised and the contentions raised in the written statement a specific issue has been raised in relation to adequacy of averments made in the petitions as to whether they constitute material facts calling for an answer by respondent-1 or whether they deserve to be struck off or not or what other order should be made. In view of this particular issue framed it becomes necessary to examine this aspect while considering the pleadings in relation to each of these issues.

5. In Election Petition 2 of 1991 the petitioner alleges that there was bribery by reason of large-scale free feeding of the electorate the details of which are set out in paragraph 17 of the petition. Issue in regard to the same is framed and that is Issue No. 6(a). The averments made by the petitioner in Election Petition 2 of 1991 in that regard are as follows :

That the returned candidate namely respondent-1 committed corrupt practices in furtherance of the prospects of his election in that though elections were due to be held on 26th May 1991 they were adjourned by three weeks by the Election Commission arbitrarily on the event of the assassination of Sri Rajiv Gandhi; that during the interval between 26th May 1991 and 15th June 1991 under the guise of observing obsequies of the assassinated former Prime Minister a large-scale free feeding of the electorate in the slum areas in the city and the poor localities in the villages was arranged by the first respondent, his election agent, his political party and other persons with the consent of the first respondent or his election agent in furtherance of the prospect of his election; that mass free feeding of the electorate on the event of the election comes within Section 123(1) of the Act and Explanation thereto. The petitioner has also furnished a list of certain places and the timing of the mass free feeding in Schedule 'E' and it is stated that mass free feeding was to entertain the electorate with a view to induce them to vote in favour of the first respondent; that the first respondent—returned candidate, his election agent and other persons including office bearers of Congress (I) invited the poor electorate to the mass feeding in connection with the obsequies ceremony and ostensibly in memory of Rajiv Gandhi throughout the constituency to entertain them with a view to induce the voters to cast their votes in favour of first respondent; that thousands of voters in the constituency partook food served by way of entertainment at such centres by way of mass free feeding in slum areas and the poor localities in the constituency is unthinkable in connection with the death of any national leader of any great eminence that as a matter of fact his corrupt practice of bribery resulted in a large section of the electorate exercising franchise in favour of the returned candidate. It is also alleged that first respondent himself arranged for such mass free feeding and he paid the expenses towards such mass feeding; that at several of the listed places thousands of villagers partook the food; that the first respondent had also published advertisements (to which aspect I will advert when I deal with the question of expenditure prescribed under Section 77 of the Act). On this aspect of the matter, the plea of the first respondent is at paragraph 12 of his written statement. He denies having committed the said corrupt practice. Each one of the allegations raised by the petitioner is denied by first respondent. It is also contended that the allegations are vague, wanting in material particulars and it is contended that the petitioner in Election Petition 2 of 1991 has not specified the specific category of bribery committed under Section 123(1)(A) of the Act inasmuch as the petitioner has not pleaded the specific category of various alternatives provided under Section 123 of the Act and that in the absence of specifications, the averments made would become vague and are capable of taking any of the various alternative forms of bribery at the time of enquiry thereby it would enlarge the scope of enquiry which is

not permissible under law. It is stated that the details set out in the schedule also do not give full particulars as to the exact places where mass feeding took place and it is not pleaded where the mass feeding had been arranged by the first respondent himself or by his election agent or by others with the consent of the first respondent or his election agent. The particulars as to the name of person who arranged the mass feeding whether by the first respondent, his election agent or his political party and the names of other persons who arranged mass feeding with the consent of the first respondent with particulars of places have not been furnished and that there is no plea of element of bargain involved in the alleged mass feeding and in the absence of these material facts it is submitted that the facts qua facts do not disclose a complete cause of action as to constitute corrupt practices under Section 123(1)(A) of the Act and hence no triable issue arises for consideration.

6. On the question of as to what are material facts or material particulars there have been several cases considered by the Supreme Court, but the leading decision, on the point is in the case of Samant N. Balakrishna vs. George Fernandes and others (AIR 1969 SC 1201). What becomes necessary information in a case has been explained by the Supreme Court in the aforesaid decision. The said decision fully deals with the nature of relationship between Sections 81 to 87 of the Act vis-a-vis Section 100 of the Act which sets out the grounds on which an election petition may be made and Section 123 which gives the various grounds of corrupt practices. Section 100 and Section 123 of the Act comprise substantive provisions of law relating to elections. Having regard to the importance on material information having serious consequences the Supreme Court considered several propositions in the said decision and summarised the same in the following manner :

- (1) Every case has to be decided on its own facts, that is to say, the kind of petition that was filed, the charges made thereunder and the state of law.
- (2) The distinction maintained in Section 100 of the Act between grounds for setting aside an election of a party where material effect of the commission of a corrupt practice on the election of the returned candidate has to be proved and other cases.
- (3) To make out a complete charge the necessary facts must be pleaded in relation to the grounds as mere repetition of the words of the statute is not sufficient. The nature of the corrupt practice and the facts necessary to make out the complete charge must be stated.
- (4) If these facts of corrupt practice are stated the charge could be said to have been alleged but where the material facts themselves are missing it is impossible to hold that the charge had been made which can be later amplified as that would tantamount to making a fresh charge.
- (5) There may be overlapping between material facts and particulars but the two are quite distinct. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated, while particulars give the necessary information to present a full picture of the cause of action. The facts which constitute the corrupt practice must be stated and the facts must be correlated to one of the heads of corrupt practice.
- (6) With reference to Section 100 of the Act corrupt practices alleged to have been committed by the candidate, by his election agent or by another person which may include also an agent with the consent of the candidate or his election agent, constitute different corrupt practices; and
- (7) An allegation of corrupt practice by agent is different from the one committed by candidate or his election agent because of further requirement of proof of the effect on the election in the former

case. This law has been recited or reiterated by the Supreme Court over and over again but there has been no departure from it.

In *Harish Chandra Bajpai and another vs. Triloki Singh and another* (AIR 1957 SC 444) there is reference to the English decision in *BEAL vs. SMITH* [(1969) 4 C.P. 145] without however noticing the distinction between material facts and particulars. The expression "ground or charge" was borrowed from that English case. The exact meaning thereof was not stated in that decision. In *Samantha Bala-krishna's* case the Court construed that expression. By "ground" may be meant the kind of corrupt practice which the petitioner alleges but the word "charge" means inclusion of some material facts to make out that ground. Though in the present cases it is contended on behalf of the first respondent that a statement made in one part and another statement made in another part cannot be taken in a disjointed form to make or connect a charge as a whole so as to constitute a charge of corrupt practice, but on an overall interpretation of the relevant pleading and if reasonably read and understood in a correct manner the charge is pleaded it can certainly be understood, firstly, the facts constituting the corrupt practice which form part of the gravamen of charge and other details thereof to make a fuller picture of the part of the cause of action in which event it could be held that there has been a complete form fulfilling the conditions prescribed both in sub-section (1) and sub-section (2) of Section 83. While there cannot be any amendment in relation to pleadings necessarily to be raised under Section 83(1) of the Act, there are decisions to the effect that particulars can be supplied even at a later stage though that proposition is seriously disputed. In this case it may be unnecessary for me to consider this aspect.

7. In order to constitute bribery what is necessary is to make an allegation that there has been an offer :

- (i) by a candidate
- (ii) or his agent
- (iii) or by any other person

with the consent of the candidate or his election agent of any gratification to any person whomsoever with the object of directly or indirectly inducing a person or electorate to vote or refrain from voting at an election or as a reward to.....to suit or non-suit for having withdrawn and fail or refrain from voting.

Let me now closely examine whether the petitioner in Election Petition 2 of 1991 has made averments in this regard to cover all aspects of the charge of bribery contained in Section 123(1)(A) of the Act. Petitioner in Election Petition 2 of 1991 states that mass feeding was arranged in certain localities by the first respondent, his election agent, his political party and other persons with the consent of the first respondent or his election agent in furtherance of the prospects of election of first respondent. When there is a rolled up plea referring to several persons having committed the act, what element of charge could be attributed to each one of them must be spelt out. The petitioner does not say in which localities the first respondent arranged mass feeding, which localities his election agent arranged for mass feedings or his political party and other persons. While giving out the details in Schedule 'E' all that the petitioner states is that mass feeding was arranged by the first respondent in furtherance of the prospects of his election. Apart from inconsistency in the plea itself—while one particular plea states that several persons were responsible for arranging the mass feeding—all that is set out in the pleading is that the first respondent arranged for mass poor feeding. If that is so, there is no plea at all in the petition as in what places his election agent or his political party and other persons, with his consent or his election agent made such arrangement is conspicuous by its absence. Therefore that part of the plea which refers to other persons cannot stand and has got to be struck off. Further, even the averment made in addition to the above plea that the first respondent, the returned candidate, his election agent and other persons including office bearers of Congress (I) invited the poor electorate to the mass feeding in connection with obsequies ceremony and ostensibly in memory of Rajiv Gandhi

throughout the constituency to entertain them with a view to induce the voters to cast their votes in favour of the first respondent does not clinch the issue. Although it is averred that mass feeding is arranged for the purpose of inducing the electorate to vote, it is not made clear as to the manner of such inducement. Whether it was offered by the first respondent himself or by his election agent or by any member of the political party of first respondent and in what form it was offered was also not made clear. In the absence of such details in regard to the charge laid it cannot be said that there is a complete plea. All that the petitioner avers is repetition of the provisions of the enactment and no more. Unless facts setting out the manner and mode of inducement—whether by signs or by verbal expressions or otherwise or by asking them to vote in favour of the first respondent or by referring to the symbol of his party—are brought home to the hilt by narration of facts that constitute the charge of corrupt practice, the plea is that behalf cannot be said to be complete. In that view of the matter also the allegation cannot be stated to be complete. Hence, the entire paragraph 17 of Election Petition 2 of 1991 will have to be and is struck off.

8. Even assuming for a moment by reason of the nature of allegation with regard to this charge and reading as a whole giving a liberal construction thereof, that there is some allegation regarding mass feeding for the purpose of inducing the electorate to vote for respondent 1, the evidence adduced by the petitioner in that behalf does not carry conviction.

8.1 The evidence adduced is through the petitioner himself, his election agent and some workers in the party and through persons who were alleged to have attended such mass feeding. The petitioner has also relied upon certain documents in relation to the arrangement of mass feeding, such as, Ex. P. 10 'Sanje Vani' newspaper dated 8th June, 1991 and Exs. P. 42, P. 79, P. 80, P. 81 and P. 82 and photographs Exs. P. 2 to P. 13 in Election Petition 6 of 1991. Although in the petition he does not refer to holding of any mass feeding in Shanthinagar, the averment made by the petitioner in Election Petition 6 of 1991 is that the photographs Exs. P. 2 to P. 13 depict the mass feeding arranged at Shanthinagar. How the petitioner in Election Petition 2 of 1991 can rely upon those photographs is not clear when there is no reference in his petition to Shanthinagar mass feeding. Further, the petitioner alleges that Bharathinagar is one of the assembly segments falling within the Bangalore North Lok Sabha constituency and that it is represented by K. J. George in the Legislature and election campaign in that segment had been entrusted to K. J. George; that the said George had been addressing public meeting along with the first respondent and they participated in the 'Padyatra' and door to door campaign, that that was before the assassination of Sri Rajiv Gandhi and later on, that at the time when ashes of Sri Rajiv Gandhi was, received amongst others the first respondent and K. J. George were also there to receive the ashes which was carried in a procession and to prove that fact that the first respondent and K. J. George participated in the programme of receiving the ashes and carrying it in a procession Ex. P. 42 is produced which is daily newspaper 'Kannada Prabha' dated 28th May, 1991. The petitioner has further stated that under the leadership of first respondent 'Anna Dhana' was arranged in connection with the 'Punya Thirthi' of Sri Rajiv Gandhi in the entire constituency, not one day but on several days. According to the petitioner, 'Anna Dhana' was held by making due publicity in newspapers and in this connection he refers to Ex. P. 10, which is only a copy of Ex. P. 43. In the said publication it is stated that 'Anna Dhana' programme took place, that it used to be organised like a public function, that there used to be arrangement for serving food, that the first respondent used to offer food himself to persons who came as guests, that it was conducted under a shamiyana and there was a platform also. The petitioner states that it was his impression that they organised this mass feeding to get votes from the poor. The witness was not categorical in his statement that it was organised for the electorate nor does he say that 'Anna Dhana' itself was confined to the electorate. Even assuming for a moment all that is stated by the petitioner earlier is correct, in the absence of averments that

it was organised for the purpose of getting votes from them, his evidence cannot be taken to be one which proves the charge. Similar is the statements made by the petitioner in relation to mass feeding alleged to have been organised at Cox Town, Maruthi Seva Nagar, Murphy Town on 9th June, 1991. According to the petitioner, mass feeding at Cox Town took place at Indian Gymkhana grounds in Wheeler Road and in Murphy Town such mass feeding took place near a slum opposite to Adarsha Talkies and it was stated that the other places where the mass feeding was arranged were Vijayapura in Devanahalli Taluk and at Bagalur Layout and he produced the pamphlet Ex. P.44 to disclose that mass feeding had been arranged on 31st May, 1991 at Vijayapura in Devanahalli Taluk.

8.2 If this is the state of evidence given by the petitioner, his election agent PW-2 states that election campaign was carried on in several ways including mass feeding in connection with the obsequies of Sri Rajiv Gandhi on 8th June, 1991 and he refers to the insertions in 'Sanje Vani' and 'Dinar Sudar', Kannada and Tamil dailies and states that there used to publicity through mikes fitted to vans and autorickshaws that there was mass feeding and it is also stated by him that Congress workers were making announcements through mikes fitted to vehicles, that mass feeding took place at Maruthi Seva Nagar on 9-6-1991, that he saw that there were 20-30 cars and 800 people being fed and that certain other workers of his party used to come and inform him about mass feeding taking place at other places also. The witness except stating that mass feeding took place does not say anything one way or the other as to whether it was for the purpose of inducing voters to vote in favour of the first respondent or not. Such a suggestion was not even made to the witness. Moreover, he is more loyal than the King in having gone a little further than the petitioner to state that announcements were made through mikes in autorickshaws while petitioner has not averred to that effect at all.

8.3 PW-5 is a resident of Devanahalli town and is a graduate in Science. He has also deposed that he is the President of a Co-operative Bank and also claims to be a social worker besides being a Councillor of the Town Municipal Council, Devanahalli since 1985. He deposes that after Sri Rajiv Gandhi's assassination mass feeding took place in Harijan and Muslim colonies in Vijayapura town; that in Vijayapura town 'Anna Dhara' took place in the Town Hall on 31-5-1991; that handbills had been printed in that connection; that he had seen pamphlets similar to Ex. P.44; that such pamphlets were distributed in different villages and people were brought in lorries and vans for mass feeding. This witness except stating that mass feeding took place at Vijayapura town on 31-5-1991 and handbills had been printed as at Ex. P.44, he does not state anything which may improve the case of the petitioner a wee bit. In view of lack of pleadings in relation to other places of mass feeding or persons who partook in such mass feeding, namely, first respondent, his election agent or other persons or any of the political parties, I disallowed the questions from being put to witness. Further, in the absence of plea in regard to the nature of inducement offered, questions also were not allowed to be put to the witnesses. In such circumstances, there is hardly any material to come to the conclusion that though the witnesses saw mass feeding taking place, but their evidence will not lead to the inference that such mass feeding has resulted in constituting a corrupt practice under Section 123 of the Act.

8.4 The other witness PW-6 is also a person having a political background and he claims to be the President of the Millath Youth Organisation and General Secretary of Indo-Arab Friendship Association and he was in Qatar. He states that Bagalur Layout is part of Jayamahall assembly segment; that after the death of Sri Rajiv Gandhi, 'Anna Dhara' took place in Bagalur Layout on 2nd June 1991 which was organised by Congress (i) party. Here, it is useful to point out that pleading in the petition is that respondent-1 made arrangement for mass feeding which is totally contrary to the case set up by the petitioner and this witness instead of aiding the petitioner has virtually destroyed the case of the petitioner.

8.5 The next witness is one J. V. Narayanappa PW-8 who is a Councillor of Vijayapura Town Municipal Council. He states that on 31-5-1991 food was distributed at the Town Hall after making wide publicity not only in Vijayapura but also in surrounding villages; that food was distributed ostensibly in connection with the obsequial ceremonies of Sri Rajiv Gandhi; that handbills had been distributed of the nature at Ex. P. 44 in Vijayapura town and in surrounding villages; that he visited the place where food was distributed as stated in the handbill; that persons named there who had appealed to the electorate in Vijayapura town and surrounding villages were participating in the 'Anna Dhara'. Once again the evidence of this witness does not carry the matter further than what other witnesses have said. The inference that could be drawn that mass feeding had taken place on a particular day, whether it was as part of the election campaign and whether appeal was made soliciting votes could not be elicited for want of proper plea.

8.6 The next witness is PW-14 one Rajanna who belongs to Samajavadi Janata Party and a Corporator of the Bangalore City Municipal Corporation, who states that on the ostensible reason of holding obsequies ceremony of Sri Rajiv Gandhi there was distribution of food in slum areas and that as stated in Ex. P.43 mass feeding took place. He further states that obsequial ceremony was only a pretext and that it is only with a view to induce the voters to vote in favour of first respondent that such mass feeding was organised; that he saw the mass feeding taking place in his division and he also saw such mass feeding taking place at Gymkhana grounds Cox Town, B.S.K. Naidu Road, Nehrupuram and Jeevanahalli slum pocket; that there were several leaders present including the first respondent; that they were distributing food to poor people; that in Nehrupuram the mass feeding was taking place at Gangmen Quarters and that he saw the leaders only at Gymkhana grounds and not at other places. Though the witness states that there is no reason why respondent-1 should have organised the mass feeding in connection with the obsequial ceremony except to induce the voters to vote in his favour, he does not say as to which persons were present at the mass feeding who were induced and in what manner. Merely stating the impressions of a matter is not evidence at all. He does not say as a matter of fact that there was any appeal being made for votes. All that is stated is that respondent-1 could not have any reason except to induce the electorate to vote for him. He does not say that first respondent had arranged the mass feeding for the purpose of securing votes, nor does he state at any place in his evidence that it was respondent-1 who arranged the mass feeding. In the absence of these pleas no conclusion can be drawn on the basis of his evidence that mass feeding had taken place which constitutes bribery under Section 123 of the Act.

8.7 PW-15 Rama Murthy states that after the elections got postponed as a result of the assassination of Sri Rajiv Gandhi, mass feeding took place in connection with the obsequial ceremony of Sri Rajiv Gandhi near Corporation Gangmen's Quarters on 9-6-1991 at about 2.30 P.M., that he witnessed the mass feeding taking place; that he saw first respondent distributing the food and that one Sri K. J. George was also present at that time. Assuming for a moment that whatever the witness has stated is correct, the witness does not state that mass feeding took place in connection with the elections but with the obsequial ceremony of Sri Rajiv Gandhi.

8.8 PW-18 is the Advertisement Manager of 'Sanje Vani' newspaper. He states that Ex. P.43 is a copy of the newspaper dated 8-6-1991 and in page 4 thereof there is an advertisement with the caption 'Anna dhara'; that that advertisement was inserted on an order being placed with them previously and the matter was also given to them by a certain concerned person; that the advertisement was signed by Sri K. J. George and the matter was published on 8th June 1991 and that charges in relation thereto had been paid as indicated in the receipt Ex. P-79. The evidence tendered by this witness may not be of much relevance for the present purpose and at appropriate stage I shall advert to his evidence later.

8.9. PW-22 is one Prakash who is a resident of Cox Town. He claims to have studied up to Pre-University examination and he is a Painter by profession. He states that five or six days prior to the election an announcement was made that there will be a mass feeding at Gymkhana grounds in Cox Town and such announcements were made through mikes installed in autorickshaws; that it is his impression that the announcements were made by the Congress party; that he went to Gymkhana ground on the next day along with other members of his family; that there was a poster of Sri Rajiv Gandhi and above the poster there was a Hand symbol; that he went to the Gymkhana ground at 1 O'Clock in the afternoon; that chairs and tables were arranged for serving food; that one George and respondent-1 served food to all the persons present numbering about 500 to 600. The evidence of this witness apart from the criticism levelled by the learned counsel for respondent-1 that he does not even know the names of the candidates contesting the election though he studied up to Pre-University class, suffers from certain inherent improbabilities. He states that he went in response to the announcement being made to participate in the mass feeding through mikes fitted to autorickshaws and Sri George and the first respondent themselves served the food to all the persons present who numbered about 500 to 600. It is on record that on the same day there were several other places where respondent-1 is said to have participated in mass feeding. If he were to serve food to 500 to 600 persons at one place all by himself, how much time he would take to serve food is anybody's guess. Further, the witness does not say that there was any suggestion made to the witness or to others in any manner soliciting votes in favour of respondent-1. Whether the mass feeding was by way of inducement to cast vote in favour of first respondent that they organised participated in the mass feeding is not elicited. In the absence of such material no inference can be drawn one way or the other in relation to a charge of bribery.

8.10 The last witness who speaks about mass feeding is one Smt. Shanthamma who is examined as PW-23. She states that she came to know that there will be a mass feeding through an announcement made about 5 or 6 days prior to the elections, but she does not know as to who made the announcement; that she went to the place of mass feeding the next day at Gymkhana ground and she saw respondent-1; that she wished him; that he himself served food to those who were present; that M.L.A. George was also present. The criticism levelled against PW-22 equally applies to this witness also for this witness also does not say as to how it was possible for respondent-1 to serve the food to all the 600 people present. In addition to that there are inherent improbabilities in the evidence tendered by this witness. There is no material that it was by way of inducement to vote in favour of respondent-1 that such mass feeding took place. I do not think the evidence of this witness will help the petitioner in any way.

9. On behalf of the petitioners reliance was placed upon certain documents to substantiate the case of bribery by mass feeding. Ex. P.10 is an advertisement inserted in 'Sanje Vani' (Ex. P.43) a Kannada daily dated 8-6-91. In insertion the title is 'Anna dhana'. It consists of photographs of Sri Rajiv Gandhi, Smt. Indira Gandhi, respondent-1 and one K. J. George. It is stated therein that in the memory of Rajiv Gandhi who sacrificed his life for the country under the auspices of Congress (I) 'Anna dhana' is arranged in Bharathinagar constituency. President Sri K. J. George, 'Anna dhana' would be done by Sri C. K. Jaffer Sharief respondent-1. Thereafter, certain places are set forth as Maruthi Seva Naga—11.30 A.M., Cox Town—12 Noon, Bharathinagar 12.30 noon, Nehrupuram 1 P.M., Shivana-chetty Garden 1.30 P.M., Ulsoor 2 P.M., Murthy Town 2.30 P.M., and the publication is said to have been made by Bharathinagar Block Congress(I) Committee and Bharathinagar Block Youth Congress(I) Committee and all are requested to participate in the said programme. The charges in relation to the said advertisement is stated to have been paid by the said K. J. George under Ex. P.79 and certain ledgers of 'Sanje Vani' newspaper had been produced at Exs. P.80, P.81 and P.82. On the basis of this advertisement it is sought to be contended that the said respondent-1 himself distributed food on 9-6-1991 at different

places and therefore, I must draw an inference considering proximity of elections and this mass feeding took place in which respondent-1 has participated which amounts to treating that the Explanation to Section 123(1)(A) is complied with. It was also sought to be contended even assuming for a moment there may not be proof to show that the entire thing had been arranged by respondent-1 himself, it could have been arranged by K. J. George who was M.L.A. from the Bharathinagar assembly constituency and was also a minister at that time in the Government of Karnataka and who was campaigning on behalf of respondent-1 and that there was constructive agency. Although at one stage Sri K. Channabasappa, learned counsel for the petitioner in Election Petition 2 of 1991, submitted that he is not relying upon any agency so far as George is concerned or his party is concerned, but the mass feeding was done at the instance of respondent-1 himself and the said George and others were only assisting him in doing such acts. When the pleadings in the petition clearly demonstrate that at certain places the mass feeding took place as enumerated in Schedule 'E' and it is stated at the top of Schedule 'E' that the same was arranged by respondent-1 himself although in the main pleadings in the petition respondent-1, his election agent and others are also alleged to have committed such acts. Where there is an allegation of corrupt practice which is covered by section 123 of the Act and such practice is stated to have been committed by several persons with different alternatives, the Supreme Court examined the matter in some depth in the case of *HARDWARI LAL Vs. KANWAL SINGH* (AIR 1972 SC 515) and stated that the material facts are to be alleged as to whether the candidate himself committed such acts or his election agent committed such acts or other agent or any other person and unless the facts disclosed in the petition could be correlated to each one of them or to each one of the facts the pleadings is stated to be incomplete. In that view of the matter also the allegations made by the petitioner in Election Petition 2 of 1991 on these aspects cannot be stated to be complete. Reading together the pleas make it clear that as set out in the petition it is respondent-1 alone who had arranged but in view of the material available in Ex. P.43 it must be held that it was arranged through Sri K. J. George on behalf of respondent-1. But I cannot accept such a contention. It is clear that the advertisement has been inserted by Bharathinagar Block Congress(I) Committee and also Bharathinagar Youth Congress(I) Committee. That is what the advertisement states and payment in regard to the advertisement has been made by Sri K. J. George cannot be disputed because the receipt Ex. P.70 indicates it. What is apparent from the record is sought to be displaced by argument. If that is so, cogent material should have been placed to displace what is manifest from the records. In the absence of the same and when the petitioner wants to prove to the contrary to what is contained in the document, strong material should have been placed before the Court. In the absence of such material and basing only on the vehemence of the argument of the learned counsel for the petitioner it cannot be held that the said programme had been arranged by respondent-1 himself. However, it was sought to be argued that it was indicated in the advertisement itself that 'Anna dhana Maduvavani Sri Jaffer Sharief' (or the person distributing the food is Sri Jaffer Sharief) and therefore respondent-1 himself must have paid for the said distribution of food and he himself must have arranged the programme. When programmes are arranged one person is asked to preside over the same and another person is asked to participate in the programme in a different capacity to do certain acts. By that itself it cannot be inferred that such person himself is wholly or partly responsible for arranging the programme. May be, it may give rise to some suspicion but suspicion by itself cannot become legal proof. In that view of the matters I do not think the Petitioner can place much reliance on Ex. P.43. Similar is the position with regard to Ex. P.90, the Tamil daily 'Dina Sudar' dated 9-6-1991. The petitioner also wanted to rely upon the photographs Exs. P.2 to P.29 and Ex. P.30 negative of the same produced in Election Petition 6 of 1991, but no foundation has been laid in the petition to show that 'Anna dhana' took place at Shanthinagar at all. When the photographs alleged to depict the scene of doing 'Anna dhana' at Shanthinagar and when no foundation is laid in the petition, I do not think the petitioner can place any reliance on Ex. P.30.

10. There is a pamphlet issued as per Ex. P.44 wherein 'Anna dhana' was said to have taken place on 31-5-1991 at Vijayapura in Devanahalli Taluk. The pamphlet discloses that the same has been issued by Vijayapura Congress(I) Committee and the contents thereof are to the effect that it is an invitation in connection with the 'Punya Thithi' or obsequial ceremonies of Sri Rajiv Gandhi. Thereafter, there is reference to Sri Rajiv Gandhi and it is stated that obsequial ceremonies would be conducted on 31-5-1991 and in that connection a meeting is arranged at 10 a.m. in the Town Hall and at that time the public are requested to participate in large numbers to pray for the departed soul. At 10 a.m. there would be offering of garlands to the photographs of Sri Rajiv Gandhi and there after there will be prayer for the soul of Sri Rajiv Gandhi to rest in peace and from 12.30 p.m. to 1 p.m. there would be Bhajan or prayers being offered and thereafter at 1-30 P.M. there would be 'Anna dhana'. In all those programmes one Muninarashimhaiah, Manchiiah, Pujenahalli Kenchalah, Rajanna, S. Ramesh, M. Krishna, Abdul Khalaq and S. Azeez and other members of the Town Municipal Council and all dignitaries in the taluk would participate and therefore the public were requested to participate in the same. Underneath the pamphlet it is mentioned that it has been issued at the instance of D. Venkatesh, President Youth Congress(I) Committee, Vijayapura and S. Manjunath, Secretary Congress(I), Vijayapura Town. The position of this pamphlet is much worse than that of Ex. P.43. At least there was reference to respondent 1 in that insertion. There is hardly any reference to him in this pamphlet at all. Moreover, a total reading of the entire pamphlet discloses that the programme had been arranged in connection with the obsequial ceremonies of late Sri Rajiv Gandhi. There is hardly any indication to show that it has anything to do with the election. Further, the persons whose names are mentioned in the pamphlet are all persons who are holders of some office either in the Congress(I) or in the Municipal Council or are members of the legislature and so on. The pamphlet by itself will not carry the case of the petitioner any further for the very reasons already stated with reference to Ex. P.43. There is hardly any justification for the petitioner to rely upon this document in support of his case.

11. Issue 3(a) in Election Petition 6 of 1991 :—

The issue reads as follows :

- “(3) Whether the petitioner proves that the 1st respondent or his Election Agent or other Agents or persons with the consent of the 1st respondent committed corrupt practice :

- (a) of bribery indulging large scale feeding as alleged in para 5.”

The allegations in this regard are as follows :

That respondent 1 after the assassination of the former Prime Minister Rajiv Gandhi took advantage of the same and began to give mass free feeding to the electorate under the guise of 'Anna dhana'; that this was done between 26-5-1991 and 15-6-1991 in the entire Bangalore North constituency wherever slums are situated and in A. K. and Harijan colonies and in all the eight assembly segments coming within the Bangalore North Parliamentary constituency; that the said mass feeding was really a bribe to the electorate as a reward and as a bargain for casting their votes in favour of first respondent; that mass feeding was done at a large scale in places such as Shivanachetty Garden and Binnamangala and such other areas. Such mass feeding was arranged for furtherance of the election prospects of the first respondent and it was offered to the electorate as a reward and as a bargain to vote in favour of him in Maruthi Seva Nagar, Nehrupuram, Ulsoor, Shanthinagar, Murphy Town Varthur constituency and Velahnoka on 9th June 1991 between 11-30 A.M. and 5 P.M.; in Devanahalli it was done on 31-5-1991 in the afternoon at 1-30 P.M., in Bagalur Layout on 2-6-1991 at 1-30 P.M.; that similarly in all the areas such mass feeding was done attracting Section 123(1) of the Act; that the object of feeding was to induce the electorate to vote in favour of first respondent; that Congress(I) workers participated along with respondent 1 in all the above mass feeding functions and it was done in the interest of respondent 1 and it has affected the election prospects of the

petitioner in the form of gratification was by mass feeding; the persons who rewarded were the electorate in the respective areas and the slums; that the distribution of food articles was for dishonest purpose, a novel method and unprecedented.

11.1 The first respondent has raised an objection that this pleading does not contain all the necessary ingredients as are required to be met because it is stated that mass feeding took place for fairly long period between 26-5-1991 to 15-6-1991 and covered the entire constituency as such, wherever the slums are situated and in A. K. and Harijan colonies. It is therefore, pleaded that it is not possible to meet such an averment at all. The necessary details are to be set forth in order to constitute a corrupt practice are not forthcoming much less the particulars in relation thereto. In regard to material particulars to be stated the names of persons or electorate the first respondent said to have met asking for votes is not set out. Except partly suggesting certain arrangements the exact places where the mass feeding took place is not set out. The petitioner has mentioned about 10 areas where free mass feeding between 11-30 A.M. and 5 P.M. between 26-5-1991 to 15-6-1991. The material facts and particulars as to which of those free mass feeding and places said to have been arranged and persons as a bargain with the voters has not been pleaded. With regard to the allegation that Congress(I) workers participated along with the first respondent in all these mass feeding functions and it was done in his interest, the petitioner has not even pleaded the names of persons who participated and whether they have participated with his consent and they have done so as a bargain for voting. The petitioner should have been specific in bringing out as to the particular form of bribe and in the absence of specifications the averments made in the petition are not capable of being answered at all and it unnecessarily enlarges the scope of enquiry and in the absence of these material facts and particulars the averments made in this paragraph have got to be struck off.

11.2 Though the pleadings opens in paragraph 5 as to cover the entire constituency wherever there are A. K. colonies and Harijan colonies and eight assembly segments between 26-5-1991 to 15-6-1991, there is specific reference to certain places where mass feeding is said to have taken place and the dates thereof have also been mentioned. Unlike in Election Petition 2 of 1991, the petitioner in Election Petition 6 of 1991 has made the specific allegation that respondent 1 himself participated in the said programme along with other party members and the said programme was arranged for the purpose of getting votes for himself to the disadvantage of the petitioner and the same was as a reward and as a bargain. Though pleading in this case can be stated to be better than what is pleaded in Election Petition 2 of 1991, in one particular detail it is lacking. The gist of the charge under Section 123(1)(A) of the Act is that the bribery of different kinds mentioned in the provision for the purpose of directly or indirectly inducing an electorate to vote or refrain from voting at an election. The important ingredient thereof being there should be averments relating to inducing an electorate to vote or refrain from voting. Merely stating that the electorate was induced directly or indirectly to vote at election in favour of respondent-1 and the same was as a reward thereof would not be sufficient. The manner of inducement or the mode of inducement must be clearly stated. Facts in relation thereto are lacking. Though it is averred in the petition that poor feeding took place only as a bribe to the electorate as a reward and as a bargain for voting, who made that offer of bribe and in what manner the bargain was made and in which of the areas is lacking. Whatever may be the other infirmities but this is sufficient to strike off paragraph 5 of the petition.

11.3 Construing the pleading very liberally in paragraph 5 and treating them to constitute sufficient pleading, I will now examine the evidence on record. So far as the evidence of the petitioner is concerned, it is a solo orchestration and she has relied upon the evidence relied upon by petitioner in Election Petition 2 of 1991 in substantiation of the claim. I have already discussed in detail as to the nature of evidence adduced in Election Petition 2 of 1991 and for the reasons stated already no reliance can be placed on that part of the evidence. The only part of the evidence on which the petitioner can rely upon is the photographs Exs P.2 to P.29.

Sri Shantharaju, learned counsel for respondent-1, submitted that the photographs taken at Exs. P.2 to P.29 cannot be admitted in evidence at all inasmuch as photographer who had taken the photographs has not been examined, and it is he who could prove these documents and none else. But in this case the procedure adopted is that in order to cut down the oral evidence many documents have been marked even by dispensing with proof thereof. Therefore I do not attach much significance to the contention advanced on behalf of respondent-1 in this regard. However, the probative value of Exs. P.2 to P.29 gets thoroughly diminished by the absence of examination of the photographer. Unless the photographer is examined it cannot be stated that in what places the photographs had been taken. To speak about the authenticity of Exs. P.2 to P.29 the best evidence is that of the photographer. That evidence is not placed before the Court. The petitioner had not taken the photographs nor present at the scene when the photographs were taken. In the absence of primary evidence which could have been laid by the petitioner I do not think much reliance can be placed upon the documents at Exs. P.2 to P.29 produced in this case. It is only the photographer who could have said, as contended for the first respondent, whether the photographs had been taken in one place or two places or more than one place or it was at a workers' meeting or any other meeting. By merely looking at the photographs and trying to interpret the same either through the words of the witnesses or by the Court itself by a general impression is too hazardous a conclusion to be drawn in a matter of this gravity. Therefore I do not think Exs. P.2 to P.29 or even Ex. P.30 would advance the case of the petitioner any further.

11.4 Petitioner's stand in this case in regard to Ex. P.43 is somewhat different from that of the petitioner in Election Petition 2 of 1991. The petitioner pleaded that when the said K. J. George had participated in several meetings and was canvassing on behalf of respondent-1 and himself being a functionary in the Congress (I) party and an important functionary thereof, it must be held that he had the authority to act on behalf of respondent-1 and that he had conducted and arranged for the mass-feeding on the said dates mentioned in Ex. P.43 at the places mentioned therein. But it is not clear even by looking to Ex. P.43, as stated earlier, whether it was K. J. George who alone had arranged on behalf of the Youth Congress(I) Committee and Block Congress(I) Committee. If that is so, whether it was arranged for and on behalf of respondent-1 cannot be definitely stated. Even assuming for a moment that pursuant to the said advertisement such mass feeding took place, what took place at the said mass feeding is not clear. Whether there were any kind of representations made on behalf of respondent-1 soliciting votes or any other visible or expression was made was also not clear. In the absence of such material particulars I do not think it will be possible to draw an inference that advertisement by itself could be taken to be proof of respondent-1 being responsible through the agency of the said K. J. George for having arranged the mass feeding. The various decisions referred to by the learned counsel on either side on the concept of 'agency' in election law pale into insignificance and it is unnecessary to refer to them. In conclusion I must hold that the petitioner has failed to establish this charge of bribery.

12. The issues in relation to obtaining or procuring or abetting or attempting to obtain the services of Gazetted Officers are as follows :

- (i) Whether the petitioner proves that with the active support of the Returning Officer, the first respondent has been able to rig the election as alleged in para 6 of the petition.
- (ii) Whether the petitioner proves that with the support of the Returning Officer, first respondent has been able to rig and/or booth capture in election as alleged in para 10 of the petition.
- (iii) Whether the petitioner proves that the first respondent his election agent and or other agents or persons with the consent of the first respondent committed the corrupt practices of obtaining or procuring or

abetting or attempt to obtain or procure the services of Gazetted Officers of the Government.

12.1 The pleadings in this regard are as follows :

That the Returning Officer had not facilitated the admittance of the polling agents of the petitioner into the polling stations while such facility had been given to first respondent. It is alleged that the polling agents were not admitted into the polling stations for the reason that the Returning Officer had not received the specimen signatures of the petitioners or their election agents in respect of polling agents; that on completion of the voting on that day the transmission of the ballot boxes was not in accordance with law from the polling stations to the counting stations. On the date of counting the counting agents of petitioners were not admitted to the counting halls and therefore there is every scope for the first respondent, with the active assistance of the Returning Officer, to rig the election. It is also alleged that the fact of rigging becomes demonstrably clear if one looks at the different messages conveyed by the Returning Officer at the end of counting. The petitioner therefore suspected that large scale rigging by the first respondent with the connivance, assistance and active support of the Returning Officer and the petitioner had information that actually the first respondent and the Returning Officer had got printed over two lakhs ballot papers in excess of the actual necessity and the first respondent had surreptitiously taken away those ballot papers to rig the polls. His information was that 30 reams of paper had been used in excess of what is required to print and ballot papers for No. 12, Bangalore North Lok Sabha elections. When the petitioner applied for grant of certified copies, the same were not granted to him and further enhancing the fears of the petitioner that there had actually been rigging and to cover up the discrepancies, there was delay in the grant of certified copies. That fraud was practised by the Returning Officer on the petitioner and the electorate and the same was ripped open by the very information published by him and he became panicky and therefore cautious. He deliberately delayed the granting of certified copies of the documents in order to reconcile the patent discrepancies in the figures at the instance of the first respondent and also the then Chief Minister Sri Bangarappa, he refused to grant certified copies. The petitioner had to file repeated applications to get the certified copies and the delay in grant of certified copies was on account of the collusion between the first respondent and the Returning Officer. On 19-6-1991, the workers and the supporters of the petitioner and the second respondent staged a demonstration in front of the office of the Returning Officer and also threatened to call a bandh in the whole constituency. The petitioner learnt that the Returning Officer was holding consultation with the Chief Minister and the first respondent and was actually tampering with the records with the assistance of pliable Returning Officer. When there was disturbance in front of his office, the Returning Officer sent for a campaigning agent of the first respondent one Sri Krishnappa and Sri Munigowda, Ex-MLC and sought for their help to counter the demonstration. The said Krishnappa and Munigowda and the supporters of the first respondent pressurised the Returning Officer not to grant copies. One Sri Sastry of Hebbal, a supporter and worker of the petitioner threatened to immolate himself, there was commotion and the Returning Officer granted the copy in Form 21-E and Form 21-C.

12.2 The first respondent took the assistance of the Gazetted Officer, namely, the Returning Officer himself in furtherance of the prospect of his election. The first respondent was always in close contact and touch with the Returning Officer. The nature of the assistance rendered by the Returning Officer to the first respondent was initially getting printed more than two lakhs ballot papers in excess of the legitimate requirement of the constituency consisting of 13,33,426 voters. According to the reliable information

received by the petitioner, nearly 30 reams of paper in excess of the legitimate quantity of paper required for printing ballot papers was consumed in printing excess ballot papers. The excess ballot papers were got printed in the Government Printing Press by the Returning Officer and supplied to the first respondent to enable the rigging of the polls. Apart from the assistance rendered by the Returning Officer to the returned candidate, at the time of counting the Returning Officer supplied official badges meant for the counting staff employed by the Returning Officer to the agents and workers of the first respondent who wore those official badges and participated in the counting in contravention of Rule 53 of the Conduct of Election Rules, 1961. When the petitioner and his election agent detected the workers and agents of the first respondent participating in the counting wearing official badges posing themselves as official counting staff and brought it to the notice of the Returning Officer, he just let go the agents and workers of the first respondent who participated in the counting just to assist the first respondent. Actually, the closed circuit T.V. cameraman focussed his camera towards the agents and workers who were wearing official badges and taking part in the counting process. There was a commotion in the counting halls and the Returning Officer chided the cameraman as to why he focussed towards those persons and video-recorded that incident. He actually instructed the cameraman to give him the cassettes in which the incident had been filmed.

12.3 The allegation in Election Petition 6 of 1991 in this regard is at paragraphs 10 to 24 of the petition. The petitioner has made reference to the discrepancies in the actual number of votes secured by each of the candidates and votes polled thereto to which I have made reference earlier while dealing with the pleadings raised in Election Petition 2 of 1991. It is claimed by the petitioner that first respondent obtained the assistance of the Returning Officer and the Chief Electoral Officer in furtherance of the prospects of his election and they are Gazetted Officers in the service of the Government of Karnataka. Throughout the election from the date of issue of calendar of events till the declaration of results, and thereafter, they have acted as agents of first respondent and they have rendered assistance with his consent for the furtherance of the prospects of his election. The petitioner submits that in a partisan manner and in favour of first respondent the Returning Officer and the Chief Electoral Officer have acted and have rendered assistance against all canons of justice to see that first respondent succeeded in the election by hook or crook. In that behalf, they have actively participated in the election process in the manner unheard of and in all the eight segments in the Bangalore North Parliamentary constituency there were 13,33,426 voters as per the list supplied to the political parties and did not contain supplementary or additional voters list. From the stage of giving the certified copy of the voters list the manipulation and design of the Returning Officer was evident and the said list did not contain the list of service voters, special voters, votes subjected to preventive detention and that is kept secret by the said officials and the petitioner was no informed of the same. The list belonging to the personnel and the voters who are among those voting personnel, polling personnel were not even informed and it is not known as to how many ballot papers were printed for those personnel and how many of them have despatched and how many of them have received on time to cast their votes. The number of voters in Form 12, 12-A, 12-B, 13-A to 13-D have not been disclosed by the said respondents. The register which ought to have been maintained for the despatch of the postal ballot papers and for having received the postal ballot papers duly countersigned by the competent authority is not disclosed by the respondent. It is also not disclosed whether Form 13-A was attested by the competent authority and the postal ballot papers details have not been furnished at all. The entire thing has been done in contravention of Section 24(2) of the Conduct of Election Rules. The postal ballot papers do not even contain the consecutive serial numbers.

12.4 The list of Presiding Officials, Polling Officials and Counting Officials have not at all been furnished despite the demand made in that behalf till the date of filing the petition. The same had been kept secret by the Returning Officer and the Chief Electoral Officer so that manipulation could be done with the active assistance through them. The

petitioner is not in a position to give the details of the Polling Officials and the counting Officials as the same has not been furnished to her. It is further urged by the petitioner that the Returning Officer, with an ulterior motive, has not received the specimen signature of the election agents to the polling officials to see that they rendered assistance to first respondent to rig at the polling stations and to see that the petitioner's polling agents cannot prevent them. The petitioner has not been informed about the number of ballot boxes that are sent to the various polling stations and the details of the polling boxes used. The petitioner's polling agents were not even permitted to enter the polling stations on the date of polling by the polling officials contrary to law and that a complaint had been lodged by the petitioner's election agent on the date of polling in this behalf and that in the majority of rural segments the polling agents were not even allowed while in the city, after the complaint was made, in some of the polling stations the petitioner's polling agents were permitted to enter that too after 12 noon as by then half of the poll had already taken place. The copies of Form 10 Part 1 which ought to have been given to the respective polling agents were also not given and thereby deprived of getting there and to see and watch the polling in the beginning and whether the polling boxes were intact and also to see that the polling boxes were sealed properly. In this behalf, it was submitted that check memos by the Election Officer maintained by the respective Chief Electoral Officer and the Election Commissioner would disclose such information if called for. The Returning Officer and the Chief Electoral Officer got printed ballot papers more than what was required for the conduct of election in the constituency. They got the ballot papers printed more than the maximum allowed by law. According to the petitioner, not less than 2,50,000 ballot papers had been printed than the requirement. This has been done to assist the first respondent and to rig and change the ballot papers. More than 30 reams of paper had been used in the Bangalore North constituency in the Government Press. In all 5000 ballot papers can be printed in excess of the requirement. Number of ballot papers as per the inspection of the Election Commission for each constituency must be reduced to the minimum possible and in Parliamentary constituency a single form should be used, but in the instant case both have been set at naught. The ballot papers should have been stitched into convenient bundles with consecutive serial numbers but, the same has been violated. There was discrepancy of ballot papers in number of ballot papers that are sent by the press and the number found on actual counting on the day of counting. There have been more than two lakhs duplicate numbers in the ballot papers that are counted and certain numbers of the ballot papers are missing. Such discrepancies have not been published in the notice board at the distributing centre nor any copy of the notice has been sent to the candidate at any point of time giving details of the duplicate numbers. This has been done by the Returning Officer and the Chief Electoral Officer to see that they could manipulate the rigging of the polling stations. These acts are in contravention of Rule 30(1) of the Conduct of Election Rules.

12.5 The petitioner contends that she has not been furnished with paper seal account and ballot paper account. The Returning Officer and the Chief Electoral Officer had allowed the workers of Congress (I) and, in particular, of the first respondent to burn the office of the Bhartiya Janata Party after the assassination of Sri Rajiv Gandhi and no action was taken by the respondent in respect of the complaint made. The Returning Officer and the Chief Electoral Officer had not drawn the polling personnel from different offices as per law but, on the other hand, they had chosen with collusion of first respondent. There has been no free and fair election and no mixing of polling personnel from different offices or departments i.e. in the State and the Central Governments. This has been done in utter contravention of the directions issued by the Election Commissioner. The Chief Electoral Officer is responsible for selection and allocation of polling personnel under Section 26 of the Act and he has done this in contravention of the directions. The electoral roll was not prepared in accordance with the polling stations and this has been done in contravention of Section 25. The polling station and the publication of the list of polling stations is not in accordance with law. The list of the polling station and the map had not been furnished to the petitioner in law, it is the Returning Officer who was responsible for drawing the list in the manner and

he is bound to supply the list to the political parties and he has not done so in the present case. The list that is prepared does not contain the serial number of the voters allotted to the particulars polling station. The structure and the location of the building is not in accordance with the directions issued but, it has been chosen to suit the first respondent. In some of the cases, it is within 100 metres while where the urban elite are there they are made to go beyond 4 kms. This has been done due to the representation made by the various electorate in the area. That, even before the election it was incumbent upon the Chief Electoral Officer to inform the programme of the collecting parties from the respective polling stations after poll enabling the petitioner's agents to follow the respective vehicles but this has not been done in this case. After the polling, ballot boxes had not taken directly to the place for counting. The concerned MLAs and Ministers have been allowed entry to the polling booths in the various polling stations coming within the respective areas to overawe the rural voters by unnecessary show of force. The polling material, voters list and additional voters list have not been supplied in many polling stations. The polling stations have been changed without approval of the election commission and without information to the petitioner on the date of poll and to illustrate the same, petitioner refers to Bhyrathi coming within the Hoskote constituency. The petitioner urges that the details of the metal seal, paper seal have not been furnished and paper seal account is not maintained in their respective books as required under the Rules. The place where the counting has to take place was at Maharani's College but the hall in which the counting would be taken pertaining to eight assembly segments were not disclosed. At the time of counting it was found that they were distributed in different halls of different eight segments. The counting was not done in respect of each segment in a single hall but in different halls. The petitioner cites by way of example Varthur, Yelahanka etc., and in Yelahanka segment, counting was done in three different halls. Similar was the case in Varthur. The diaries maintained by the Returning Officer as contemplated under Rule 40 of the Conduct of Election Rules would disclose this position. The entire counting had taken place in contravention of the Rules and the declaration of results was also not correct. The counting has been done in contravention of Rule 53 of the Conduct of Election Rules.

12.6 It is alleged that the names of the counting officials had been given to the petitioner with the object to see that any person of the first respondent could sit as counting agent and it did not take place at the time of counting. The persons who were not concerned with the official work or with counting and who were Congress (I) staunch workers were given official badges of counting officials and they were made to sit at the counting table for the purpose of counting. The petitioner was not aware of this until they were caught by the agent of second respondent. The said persons not only counted and participated in the counting but they were wearing official badges and posed themselves as official counting staff. This fact was within the knowledge of the Returning Officer. Television cameraman wanted to take photograph and focus the camera and take the actual counting but they were prevented from taking this scene by the Assistant Returning Officer obviously to see that the fraud will not come out. In fact, cassette pertaining to this incident is with the cameraman and the petitioner learns that it has been taken away by the Returning Officer. The counting hall did not have sufficient light and sufficient accommodation to accommodate the counting agents. The counting agents of the petitioner were not allowed inside the counting hall till about 10 A.M. and in many of the counting halls all the counting agents of the petitioner were not allowed to participate. There were in all 164 counting tables arranged in 16 rooms instead of 8 rooms. Instructions had been given to the petitioner that the list of the counting agents should be given three days prior along with the photographs and that the list given subsequently will not be entertained. Petitioner had given a list as called upon but despite that, counting agents were not allowed entry into the counting halls while on the other hand, respondent-1 had not given the list of counting agents but his counting agents had been allowed entry into the counting halls and many officials and non-officials were allowed to sit in the counting halls for helping and at the time of counting, all kinds of manipulation had taken place by

inhating the figures of the first respondent and correspondingly declaring the votes secured by the petitioner in all the segments and in all the counting halls and almost in all the tables. This has been managed by making the first respondent's workers to sit as counting officials and the manipulation has been done not only at the time of counting but even at the time of tabulation. At the time of counting ballot papers which were counted in favour of the petitioner were mixed up with the first respondent and sometimes the counting agents who were present were not shown the ballot boxes before counting to find out whether the seals were intact or not. Paper seals and metal seals over the respective ballot boxes were not shown to the petitioner or his agents. The sorting was done in a haphazard manner. Ballot papers were counted and kept in bundles of 50 and were mixed up with the ballot papers containing 49 to 50 ballot papers in favour of the petitioner and were tied up with one ballot paper of first respondent to see that they are counted in favour of first respondent. At the time of counting, Congress (I) persons were caught red-handed when they were wearing official badges of the counting officials. They were the workers of first respondent. One Sri Ramachandra son of Krishnaiah Setty and the other Sri Nurulla Shariff C/o C. K. Jaffer Sharief, a close relative of first respondent, were sitting. Respondent-2 had complained about this fact to Returning Officer and the Returning Officer made a pretext of catching them and prevented the photographer from taking the photograph and snatched the camera of the photographer and sent only those two persons, while in other segments, in other tables, Congress (I) persons were allowed to count. While the counting was in progress, the valid votes polled in favour of the petitioner had been transferred to the first respondent and counted in his favour. Sometimes they were included in the bundles pertaining to first respondent to see that petitioner's lead is thereby reduced. Thus, the Returning Officer had allowed unofficial persons to enter the counting halls at the instance of first respondent. The specimen signature has been properly given in time by the election agent of the petitioner and acknowledgement to that effect had also been obtained but nevertheless the said specimen signature of the election agent had not been communicated to the respective polling stations with a view to see that the Presiding Officer would not allow the polling agent producing the polling agent form given by the election agent.

An endorsement has been given by one of the polling station in writing that they are not going to permit. The Assistant Returning Officer too contacted the petitioner on the date of the poll by a trunkcall from Hoskote stating that he cannot permit the polling agent in Hoskote segment as the specimen signature of the election agent of the petitioner had not been furnished by the Returning Officer to the respective polling stations. In spite of the complaint made by the petitioner to the Returning Officer and the Assistant Returning Officer, the petitioner's polling agents were not permitted to participate in the polling station and perform their duties as polling agents in almost all the rural segments, while in the city they were permitted as stated earlier. Thus, it is clear that the Returning Officer and the Chief Electoral Officer permitted large scale rigging in Devanahalli and Hoskote taking advantage of the fact that there had been 8 segments which would not be easy to locate. After poll as required under Rule 47 of the Conduct of Election Rules the ballot boxes should have been transported to counting centre and it has not been done so. They were diverted to other places contrary to the mustering and demustering list given to the petitioner. The petitioner lodged a complaint in that regard also to the Chief Electoral Officer and the Returning Officer. After the counting on 16-6-1991, Form 21E had been written and Form 21C was drawn and the same has been intimated as contemplated under law to the Chief Election Commissioner. The same differs from the copy supplied to the petitioner and various different figures have been given to the media. One figure is given to the department of Personnel & Administrative Reforms while another to the press. Something else had been conveyed to the Chief Election Commissioner and thus the Returning Officer has played fraud. The Returning Officer has stated in the telex message to the Chief Election Commissioner that 8 lakhs odd people have polled while on the date of the poll he has furnished the figures stating that 6 lakhs and

odd people have voted. The manipulation is apparent and manifest and his honesty of the Returning Officer is obvious and he has done so to help and aid assist the success of first respondent. The figures that were found at the time of counting in the respective table do not reflect in Form 16 Part II. There has been discrepancy in Form 16 Part I and Form 16 Part II also which were written at the time of counting. Whatever was entered at the time of counting is not reflected in the Forms now supplied in respect of five segments. Similar is the case with three other segments for which copies itself have not been furnished on the ground that they are at the Treasury contrary to Rule 93 of the Conduct of Election Rules.

12.7 It is urged on behalf of the petitioner that the inspection of documents had not been allowed. Certified copies of the tabular, segmentwise, roundwise as reflected on the date of the counting is not furnished to the petitioner in respect of any of the segments and all these documents have subsequently been manoeuvred and manipulated. There is a difference of more than two lakhs votes in the communication sent to the Chief Election Commissioner inasmuch as in the communication and wireless message sent on 16-6-1991 the valid votes polled is shown as 8,32,465 but in the Form 21E furnished to the petitioner, it is shown as 6,04,604. Thereafter the petitioner has set forth the various discrepancies in the figures sent to different departments and the information furnished to the parties to which I have already adverted to. When the petitioner sought for Form 21E, the same was not furnished. But a manipulated Form 21E was furnished inflating the figures of the alleged votes secured by the first respondent not only find a place in the newspapers but also the same was broadcast through different electronic media also. The Returning Officer played fraud and manoeuvred and manipulated the records to suit and assist the first respondent to secure more votes which, in fact, he had not secured. The petitioner had not been permitted, until the filing of the petition, to inspect the original records though in law she is entitled to do so. The certified copy was supplied on 17-6-1991 after much dodging by the Returning Officer and he had not furnish some of the forms at all.

12.8 At the time of counting some of the ballot papers numbers were counted in Shivajinagar constituency and the same numbers were counted in respect of Shivajinagar and Devanahalli constituencies. Similarly, the same serial numbers of ballot papers were found in Bharathinagar and Hoskote constituencies. Similar was the case with other constituencies. It is apparent that the ballot papers were not genuine and they sought to have been rejected and should not have been counted as the same is in violation of Section 100 (1)(d)(iii) and (iv) read with Section 64 of the Act. Besides this infirmity, it is pointed out that there have been excess counting in various polling stations, while there have been shortage in many other polling stations, when it was taken up for counting. In respect of three segments, copies have not been furnished and the petitioner submits that there have been excess counting in certain polling stations set forth in paragraph 17 of the petition. In addition, there have been excess or shortage in almost all the segments and the figures have been inflated so far as respondent-I is concerned at the time of tabulation while the same has been reduced in respect of petitioner and second respondent are concerned. A few instances thereto are also set forth in the petition to which I shall make detailed reference at the appropriate stage.

12.9 It is submitted that the figures shown in Form 20 are not the real figures and it does not reflect the votes secured by the respective candidates. They are manipulated to suit the declaration made in Form 21E by the Returning Officer. Form 21C and 21E do not bear the same date and the serial numbers of ballot papers are not continuous from one segment to another. From 16 Part I itself has been manipulated and adjustments have been made and in many cases, its accounts are irreconcilable. The votes secured by each of the candidates at the time of counting are entered by the Counting Supervisors at the respective tables is not found in Form 16 Part II. It has been

manipulated after the declaration of the results. It is evident on its fact that inasmuch as Form 16 Part II are now written in separate page and they are not the one that were prepared on the date of counting. The entire counting is in contravention of Rules 51, 53, 54, 54A, 55, 56, 60 and 64 of the Conduct of Election Rules and the entire election has got to be set at naught and in the alternative, ballot papers have to be recounted.

12.10 It is alleged that, at the time of tabulation the votes secured by the second respondent have also been inflated in many cases and hence she submits that first respondent has committed and taken the assistance under Section 123(7) of the Act of Government officials and has committed corrupt practice and the entire election process which has culminated in favour of first respondent is a fraud and the election deserves to be set aside. It is alleged that the Returning Officer had not furnished the number of tendered votes as required in Form 21E properly and it is only stated to be Nil while there are tendered voters. The petitioner further states that none of the documents tally with one another so far as Form 16 Parts I and II are concerned or between Form 16 Part II and Form 20 or Form 20 with Form 21E or with any other records either in respect of ballot papers register or voting statistics. The Chief Election Commissioner has deliberately refused to see the petitioner and to receive the representation even when he was at Bangalore and he failed to take action on the representation given and his silence amounts to siding with the party in power. Similarly, the Chief Electoral Officer has been a silent spectator for all the events that took place and has failed to give suitable direction to the Returning Officer. On the other hand, he actively participated in getting the ballot papers printed in excess and distributing the same cabling the 1st respondent to rig and exchange the ballot papers afterwards. The averments made as to the arrangements made in the counting hall are reiterated and claims that the same has been haphazardly done so that the counting agents and the election agents would not be able to make out the rigging and other irregularities. It is stated that the petitioner is not in a position to give serial number of the ballot papers where discrepancies have been found and that there are discrepancies even in the rejected ballot papers and there is a difference of about 3000 votes in the telex message and in Form 21A.

12.11 In reply, in Election Petition 2 of 1991, the first respondent denies the allegation of rigging in any manner either by himself or in collusion with the Returning Officer or the Chief Election Officer as alleged in the petition. The first respondent also alleges that the allegations made in the petition do not constitute corrupt practice within the meaning of Section 123(7) of the Act inasmuch as all the necessary ingredients thereto have been complied with. The stand of the respondent is that there have been certain discrepancies in the voting results declared by the Returning Officer inasmuch as there was some mistake in respect of Shanthinagar constituency and when that was set right the other figures tally with the voting statistics available earlier and in all other constituencies, though there have been some discrepancies in the figures reconciled, they are not of such magnitude as to materially affect the result of the petitioner. They deny that they had in any manner got printed excess ballot papers. The allegation that the first respondent got printed, in collusion either with the Returning Officer or the Chief Electoral Officer, or with the Director of Printing & Stationery or all of them or with any of them, is denied. Their stand in regard to the counting agents being allowed or not being allowed or the polling agents being allowed or not being allowed is not of any material in view of Section 51 of the Act unless the process of counting and polling is shown to be in contravention of the Rules. The respondents' case being one of denial and also an attack on the nature of the pleadings, it becomes necessary first to examine as to whether the pleadings made in this case are sufficient to allege that first respondent had obtained assistance of the Gazetted Officers in furtherance of the prospects of his election.

13 The law on the matter is laid down in Hardwari Lal's case (supra) as follows : Section 123(7) of the Act consists of several parts and indicates different heads of corrupt practice.

- (i) First, the obtaining by a candidate or his agent or by any other person any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government as referred to in the Act.
- (ii) Second, the procuring by a candidate or his agent or by any other person with the consent of the returned candidate and assistance (other than the giving of the vote) for the furtherance of the prospects of that candidate's election.
- (iii) Third, the abetting by a candidate or his agent or by any other person with the consent of the candidate or his election agent any assistance (other than the giving of vote) for the furtherance, of the prospects of that candidate's election.
- (iv) Fourth, the attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent any assistance for the furtherance of the prospects of that candidate's election.

The assistance that is forbidden or prohibited by the statute is any assistance other than the giving of vote. The four heads of corrupt practices are:

- (a) Obtaining;
- (b) Procuring;
- (c) Abetting; and
- (d) Attempting

the assistance in furtherance of one's election prospects. The material facts covered in such a case are as to whether the candidate obtained or procured or abetted or attempted to obtain or procure any assistance other than the giving of vote. If that is so, what is to be seen in the present case is whether such averments have been made. The petitioners in both these cases have alleged various departures from law in the matter of conduct of election by the Returning Officer and the Chief Electoral Officer. Whether that is so or not is another matter. Whether by reason of not following law or committing any illegality in the process of conducting an election merely by itself would constitute giving assistance to a candidate or not arises for consideration. What is prohibited under the law is procuring or obtaining of assistance by the candidate or on his behalf, such assistance. It is alleged that at the behest of first respondents certain illegal events have been committed by the respondents. But unless a conspiracy is alleged between the first respondent and concerned officers it is difficult to accept the theory set out by the petitioners that they have done so with the object of giving assistance to first respondent. It is not the case of the petitioners that there has been any such conspiracy between first respondent and the Chief Electoral Officer or the Returning Officer. No averments to that effect have been made in the petitions. The next question that falls for consideration is, when an election is attacked on corrupt practice falling within the meaning of Section 123(3), the manner in which the assistance was sought for or obtained will have to be spelt out. In the present case, except alleging that various illegalities have been committed by the officers concerned, to further averments are made by the petitioners. Whether these averments taken by themselves would be sufficient to constitute corrupt practice or not would be doubtful. But, I would presume for the purpose of this case that they are set out and pleaded in the averments. Even so, even assuming for a moment that illegalities had been committed by the concerned officers, the question that arises for consideration is whether there has been any link or nexus between the first respondent and the concerned officers. Unless such nexus is pleaded or established between first respondent and concerned officers, the case of the petitioners that first respondent had obtained such assistance from the Returning Officer or the Chief Electoral Officer cannot be inferred. The petitioners do not state in the petition as to why there is any special affection so far as the Returning Officer or the Chief Electoral Officer is concerned with that of first respondent. This fact

should have been pleaded. The question that looms large is what was that special kind of relationship between them in order to favour him? The only evidence led before this Court is that there is no Zilla Parishad so far as the Urban district is concerned and the Deputy Commissioner, who is also the Returning Officer, happens to be the Chairman of such Council and the concerned MPs would also be the members of the Council. That by itself cannot establish any nexus between the Returning Officer and the first respondent. In the case of the Chief Electoral Officer no such evidence is adduced at all. It is not the case of the petitioners that these officers had served under the first respondent in one capacity or the other nor it is their case that the Returning Officer had been the chosen one who had always been the Returning Officer so far as the first respondent is concerned in all the elections or in some of the elections. No material in this regard is forthcoming. Unless that kind of link is established as stated by me earlier, it is difficult to accept the theory put forth by the petitioners that, in order to assist the first respondent certain acts have been done by the Returning Officer and the Chief Electoral Officer. It is sought to be contended that, on account of the defence taken by the first respondent in the course of these proceedings, it must be held that first respondent is trying to shield the said officers and thereby we can infer such a nexus between the Returning officer and the first respondent. I am afraid this is stretching the matter too far. When the first respondent wants to defend his election, he has got to point out that the action taken by the officers is right and also contend that even if they are wrong, the same would not affect the result of the election one way or the other. If such a defence is taken, mere defence cannot be characterised as shielding the officers and thereby draw an inference that there is close nexus between respondent-1 and the Returning Officer so as to amount their acts as rendering assistance to respondent-1 in terms of Section 123(7) of the Act. The case of the petitioners put forth in that regard is not at all worthy of credence because no witness comes forward to say as to what that close link between first respondent and the concerned officers is. Further, it is sought to be contended that there are 132 lapses on the part of the officers concerned in the matter of conduct of election and therefore I should draw an inference that the Returning Officer could not have committed such illegalities but for the fact that he wanted to favour the first respondent. All the lapses pointed out cannot be attributed to the Returning Officer alone. There are several other officers working under him who may have been responsible for many of the acts. The petitioners do not allege that the Returning Officer had instructed the said officers to act in a particular way to favour the first respondent.

14. The allegations made in the petitions do not indicate that first respondent directly secured the assistance of the Returning Officer or the Chief Electoral Officer. What is alleged in the petitions is that, in the circumstances of the case, an inference has to be drawn that the officers concerned must have acted in the manner referred to earlier only to to help the first respondent. There is no direct evidence available as to complicity of officers. No nexus is alleged or established by the petitioners between first respondent and the officers referred to above. Therefore, if the petitioners want to rely upon the circumstantial evidence, the charge being one of corrupt practice arising under Section 123(7) of the Act, it must be of such nature which constitutes a complete sequence of circumstances leading to the one and only inference that first respondent has obtained the assistance of the officers concerned. But if it is consistent with any other hypothesis that such assistance may not have been obtained, it is difficult to accept that first respondent has obtained such services. In the chain of circumstances the link between first respondent and the officers being absent and the illegalities or irregularities committed by the officers concerned even if true could give rise to only a suspicion that the officers may have done so only to assist or aid first respondent, but suspicion is no proof. Such an inference is not inconsistent with them having done so for other reasons other than assisting respondent-1. Hence it would not be safe to draw an inference that such assistance has been rendered to first respondent or is it established beyond all reasonable doubt. In the circumstances, I cannot but hold that petitioners have not established that first respondent had obtained or procured the assistance of the Gazetted

officers in furtherance of the prospects of his election.

15. Issue No. 1 in Election Petition 6 of 1991 :

The office has raised an objection that Election Petition 6 of 1991 is not filed within 45 days from the date of the declaration of results of the election. According to the office, the results of the election were declared on 16th June, 1991 and this petition has been filed on 31st July, 1991. Inasmuch as under Section 81 of the Act petition has to be filed within 45 days from the date of declaration of election, this petition is barred by limitation.

15.1 In *Krishna Ballabh Prasad Singh vs. Sub-Divisional Officer, Hilsa-cum-Retiring Officer & Others* (AIR 1985 SC 1746) the Supreme Court explained the scope of Sections 66 and 169 of the Act and Rule 66 of the Conduct of Election Rules, Form 22 and Form 21C. The Court held that the announcement by the Returning Officer that the petitioner had been elected has no legal status because the declaration in Form 21C had not yet been drawn up. Even the grant of the certificate of election in Form 22 to the petitioner can not be of any avail because Rule 66 contemplates the grant of such certificate only after the candidate has been declared elected under Section 66 of the Act which refers us back to Rule 64 and therefore to Form 21C. The provisions of law have to be read in that matter. In the present case, the declaration of election was made only on 17th June, 1991 as made clear in the documents produced before the Court. In that view of the matter, I do not think there is any substance in the office objections. Office objections will have to be over ruled and this issue will have to be answered stating that the petition filed is in time.

16. Expenditure.—The petitioners in the two petitions have raised pleadings to the effect that respondent-1 had incurred or authorised expenditure in contravention of Section 77 of the Act as alleged in paragraphs 8 and 9 in Election Petition 6 of 1991 and in paragraphs 21 to 27 in Election Petition 2 of 1991. The petitioner in Election Petition 2 of 1991 raises the following pleas in that regard.

That the first respondent has incurred or authorised the incurring of expenditure in contravention of Section 77 of the Act and far in excess of the maximum prescribed under Rule 90 of the Rules. It is stated that the first respondent had published advertisements in all the National dailies in Kannada, English, Urdu and Tamil appealing the voters to vote in his favour under his signature. The advertisement charges in respect of such advertisements alone would far exceed the ceiling limit of Rs. 1,50,000. A list of some such advertisements are set forth in Schedule 'F' to the petition; that respondent-1 had not included in his return of election expenses the cost of these advertisements. It is alleged that at the foot of advertisement it was inserted as "issued by the General Secretary, Karnataka Pradesh Congress Committee(D), Bangalore" and though it is stated to have been issued by the political party to which the first respondent belongs, actually and in fact the expenditure in incurred by the first respondent in furtherance of the prospects of his election. The insertion at the foot of the advertisement as aforesaid is made falsely to bring it within the Explanation I of Section 77 of the Act. As a matter of fact, the political party has incurred that expenditure towards advertisement charges listed in Schedule 'F', even though it is alleged to have been issued by the political party. The Election of the first respondent is liable to be set aside on the ground of incurring or authorising incurring expenditure in contravention of Section 77 of the Act.

16.1 The plea in this regard is met by the first respondent in the written statement as follows:

The averment is denied that he had incurred or authorised incurring of expenditure in excess of the maximum prescribed under Rule 90 and that he had published advertisements in the National Dailies in Kannada, English, Urdu and Tamil appealing to the voters to vote in his favour under his signature, is false and the same is denied. Each one of the allegations in relation to the payment of advertisement

charges by respondent-1 is denied. The allegation that an insertion at the foot of the advertisement is falsely made to bring it within Explanation I to Section 77 of the Act is denied as false. The contention that the charges incurred in respect of the advertisements has been incurred by himself and not by the political party is also denied. The first respondent wonders as to the basis upon which the petitioner has made these assertions contrary to the statement appearing in the foot of the advertisement. The advertisements described in Schedule 'F' have not been issued by him and he has not incurred any expenses in getting those advertisements published. He also submits that in order to constitute a corrupt practice under Section 123 (6) of the Act the petitioner has to plead that this respondent has either incurred or authorised incurring expenditure in contravention of Section 77 of the Act. Except furnishing a list of advertisements alleged to have been issued by respondent-1 and making an estimate of the probable cost of such advertisement, the petitioner has not pleaded the actual amount incurred by respondent No. 1. In the absence of such a plea, the said averments are bereft of material particulars such as dates on which the payment had been made, whether such payment had been made by cash or cheque etc. Hence the averments made in paragraph 21 are not in conformity with Section 83 of the Act. The first respondent also has passed a left-handed compliment to the petitioner that by making clever averments the petitioner cannot escape the burden of establishing that the first respondent has contravened the provisions of the Act in the matter of incurring election expenditure.

16.2 The gist of the charge under Section 123(6) is incurring or authorising expenses in contravention of Section 77 of the Act. There are innumerable decisions on the point to show that mere contravention of sub-sections (1) and (2) of Section 77 does not constitute a corrupt practice. It consists in contravention of sub-section (3) only. This position is made clear by the Supreme Court in *SHIV-CHARAN SINGH-vs-MAHARAJ KUMAR SRI BRIJENDRA PAL* (1976) 1 SCR 416; *DALCHAND JAIN-vs-NARAYAN SHANKER TRIVEDI* (41 ELR 163 SC); *GHASI RAM MAJHI-vs-ONKAR SINGH* (AIR 1968 SC 1191); *KHADER SHERIEF-vs-ABDUL GAROOR SAHIB* (30 ELR 401); *DWARKA PRASAD-vs-KAMAL NARAYAN* (AIR 1970 SC 1477) and of this Court in *SANGAPPA-vs-SHIVAMURTHY* (23 ELR 51) (Division Bench).

The Courts are unanimous in holding that contravention of Section 77(1) and (2) does not amount to a corrupt practice and contravention of sub-section (3) as regards the maximum amount of expenditure only amounts to a corrupt practice under Section 77 of the Act. The reason for holding so is that the expression "authorising or incurring" in sub-section (6) of Section 123 when considered in the light of previous law relating to election expenses narrows down the scope of the wide language used therein and that mere non-maintenance of account books or entries thereto will not result in contravention thereof. In case of non-filing of accounts before the Election Commission or non-maintenance of accounts all that

would happen is other consequences will follow. But the gist of the charge under section 123(6) incurring or authorising of expenditure beyond the limit prescribed under Section 77 would be attracted only when Section 77(3) is contravened. Therefore, the pleadings raised in the petition by the petitioner that respondent-1 has incurred expenditure in respect of certain advertisements and those advertisements are detailed therein and he gives his reasonable estimate of incurring expenses towards such advertisement, cannot be said to be wanting in or deficient plea. But the real question for consideration in this case is whether respondent-1 has incurred or authorised incurring expenditure in this behalf.

16.3 The learned counsel for the petitioner appearing in Election Petition 6 of 1991 relying upon the decision of this Court in **T. M. CHANDRASHEKAR Vs. L. R. SHIVARAME GOWDA** (ILR 1992 KAR 444) contended that maintenance of accounts and expenditure incurred or authorised to incur expenditure should not be made a mockery, but a vital fabric of election process and that indeed is the spirit of Section 77(1) and (2) of the Act, and consequently, this Court should hold that the same amounts to incurring or authorising expenditure in contravention of Section 77.

In that decision, that Court was considering the question relating to incurring of expenditure by a person and that expenditure was said to have been incurred by him and having incurred that expenditure the same having not been included in the accounts. It was sought to be contended that the said contravention would attract Section 123(6) as well. Therefore, the question to be answered is whether respondent-1 has incurred the expenditure in that regard to make applicable the decision aforesaid to the facts of this case. Apart from that, I must make it clear that in the said decision the learned Judge in arriving at the conclusion of the mutual effect of Section 77 and Section 123(6), has not taken note of the decision of the Supreme Court and the Division Bench ruling of this Court referred to earlier. Therefore, I do not think, this decision can be stated to be an authority for the proposition that any contravention of Section 77 would amount to violation of Section 123(6) of the Act and no such violation could be confined only to Section 77(3) of the Act. When a decision is rendered without reference to the decision of this Court by a Division Bench or the Supreme Court, the same cannot have any effect as a precedent.

The learned Judge had decided this case proceeding on the basis that non-compliance with the provisions of the Act and the Rules made thereunder is a ground to declare void the election of a returned candidate, but the condition thereto is that such non-compliance with the provisions thereto must have resulted in materially affecting the election. It is only in that event the election could be void under Section 100(1) (d) (iv) of the Act. Non-maintenance of accounts or defective accounts may be in some cases treated as non-compliance of the Act or the Rules, but that would constitute a corrupt practice for pur-

pose of Section 123(6). In the present case, there is no averment as to non-inclusion of any item of expenditure or incorrect maintenance of accounts by respondent-1 which amounts to violation of the provisions of the Act or Rules thereby materially affecting the result of the election. Therefore, it is unnecessary to examine that aspect of the matter.

In order to substantiate the contention that respondent-1 has incurred expenditure, the petitioners have examined themselves and certain witnesses who are incharge of the respective newspaper establishments. The petitioner in Election Petition 2 of 1991 states in his deposition as follows :

“That the advertisements have been inserted on behalf of the first respondent in several newspapers referred to earlier; that there were advertisements published in different newspapers, some of them were in general terms and some of them contained the advertisements appealing for votes to be cast to the party as such; in certain others, specific request for votes in favour of respondent-1 was made; some of those advertisements also contain a statement made by first respondent with a facsimile of his signature”; and therefore sought to contend that there are two patterns of advertisements, one which really projected the views of the party and the other was purely for the advancement of election prospects of the first respondent. The latter category of advertisements must be held to have been issued by the first respondent himself and expenses in respect thereto has also been incurred by him and the political party could not have incurred on behalf of an individual candidate belonging to the party and it would be clear abuse of the provisions of Explanation I to Section 77 of the Act if interpreted in strict terms.

Before appreciating the pleadings in this regard, it would be necessary to know the law on this aspect.

In **Dr. P. NALLA THAMPY TERAH vs. UNION OF INDIA & OTHERS** (AIR 1985 SC 1133) the constitutional validity of Explanation I to Section 77 of the Act was called in question. The Supreme Court examined the entire gamut of Section 77 and the Explanation thereto and held that the amendment has been introduced to the Act in the wake of the decision of the Supreme Court in **KANWARLAL GUPTA vs. AMAR NATH CHAWLA** (AIR 1975 SC 308). The Supreme Court while upholding the constitutional validity thereof explained the scope of Explanation I that :

“If an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation I will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body of persons, or by an individual (other than the candidate or his election agent) that the Explanation would come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other per-

son and plead for the protection of Explanation I. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because, the money is his. What matters for the purpose of Explanation I is not whose hand it is that spends the money. The essence of the matter is, whose money it is. It is only if the money expended by a political party, for example, is not laid at its disposal by the candidate or his election agent that Explanation I would apply. In other words, it must be shown, in order that Explanation I may apply, that the source of the expenditure incurred was not the candidate or his election agent".

It is significant to notice as to how the Supreme Court understood the language of this provision :

"It says through Explanation I that persons other than the candidate or his election agent may, on their own, release their purse strings and never tie them again".

While I am on this point, it is also necessary to notice what is stated by the Supreme Court in *SMT INDIRA NEHRU GANDHI Vs. SHRI RAJ NARAIN* (AIR 1975 SC 2299) explaining scope of Section 77 and Explanation thereto. The Supreme Court stated that :

"authorisation in this regard means acceptance of the responsibility and such authorisation must precede the expenditure. Authorisation would mean reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur expenditure. In order to constitute authorisation, the effect must be that the authority must carry with it the right of reimbursement, and the test of authorisation would naturally be the creation of a liability to reimburse whoever spends the money and not necessarily the provision of money before hand by the candidate on whose behalf it is spent. Nevertheless, the authorisation has to be set up and proved."

It is further elaborated that voluntary expenditure by friends, relations or sympathisers and expenditure incurred by a candidate's party, without any request or authorisation by the candidate, can never be deemed to be expenditure by a candidate himself. The law requires proof of circumstances from which at least implied authorisation can be inferred and it is not enough that some advantage accrued or expenditure was incurred within the knowledge of the candidate.

In the light of these two decisions of the Supreme Court, I may now examine the material on record. The witnesses who represent the different newspaper establishments have categorically stated that expenditure has been paid to advertising agencies on behalf of the political party.

16.4 PW-19 is one Syed Iqbal Ahmed. He states that he is the person incharge of the Advertisement in the office of 'Daily Salar', Urdu daily, and the said newspapers is run by a Trust. During the last Parliamentary elections held in 1991, advertisements were inserted on behalf of the party and the candidates. He refers to Ex. P. 55 and the bill raised in Ex. P. 83 in relation thereto. Thereafter, he refers to Ex. P. 84 which pertains to another advertisement at Ex. P. 57(a). These advertisements are said to have been inserted by one Mohammed Obedulla Sheriff. He refers to another advertisement at Ex. P. 58(1) and states that the same has been inserted by Empeegee Advertisers. He also states another advertisement at Ex. P. 59(a) and the bill at Ex. P. 86 which is inserted by Mohammed Obedulla Sheriff. He states that they have collected the advertising charges from Rakshenda Publications. The bill at Ex. P. 60 pertains to advertisement at Ex. P. 59(b) which is inserted by the General Secretary of the KPCC(I). He refers to Ex. P. 59(c) which is an advertisement issued by K. Rehman Khan and General Secretary, KPCC(I). He refers to Ex. P. 59(d) another advertisement inserted by AICC(I) and the payment is made by Clarion Advertising Agency. He refers to the ledgers maintained in that regard and produced the same before the Court. In all these advertisements, the charges are paid either by Empeegee Advertisers, Rakshenda Publications or Clarion Advertising Agency or Stimulus Communications. In the advertisements themselves it is stated that the advertisements were made on behalf of one or the other functionary of the Congress party. When the advertisements themselves disclose that they have been made on behalf of a particular party by one or the other functionary and bills have been paid on their behalf and the Account books produced before the Court also disclose the same, I do not think this Court could draw an inference that nevertheless the amount should have been paid by respondent-1, even in the absence of any material to the contrary. The petitioner has not placed before the Court any material to show that expenditure has been incurred by respondent-1 in order to bring it within the scope of certain observations made in *NALLA THAMPY's* case, except stating that though these advertisements have been made at the instance of the office bearers mentioned in those advertisements, expenditure has been incurred by respondent-1.

16.5 It was asserted on behalf of the petitioners that respondent-1 should have examined the Treasurer or Secretary of the KPCC(I) or AICC(I) to establish that expenditure has been incurred by them and not by respondent-1. But, it is the petitioner's own case that advertisements have been inserted in the name of KPCC(I) or AICC(I) and respondent-1 has incurred the expenses. If the case of the petitioners is that expenses had been incurred by respondent-1, material should be forthcoming thereto. What is apparent is sought to be displaced by something not placed before the Court. It becomes difficult to accept the case set up by the petitioners. Moreover, if the petitioners wanted to establish that the expenditure had not been incurred by Congress (I) party, as contended, they should have further examined the witnesses to elicit as to who have been given the advertisements to the respective newspapers because the bills in that regard have been raised in the name of the Advertisers and payments have been made by

the Advertisers on behalf of their clients. Unless the Advertisers themselves had been examined and material had been placed before the Court to show that although ostensibly expenditure is incurred by the party or advertisement has been released on behalf of the party, respondent-1 himself has incurred the expenses, it is difficult to accept the case of the petitioners. Hence, in the present case, there is paucity of material in this regard. Moreover, the Explanation to Section 77 does not stop with the political party to take it out of the net of the expenditure of a candidate, but also extends to the expenditure incurred by a body of individuals or associations or other persons as well. As stated by the Supreme Court, unless it is shown as to whose expenditure it is and the persons other than the candidate or his election agent have incurred expenditure and on their own have released their purse strings and never tied them again, the question of fastening that liability to respondent-1 does not arise. Therefore, the petitioners have miserably failed in this regard to establish that respondent-1 has incurred the expenditure.

16.6 The state of affairs in respect of other advertisements is no better. PW-24 is one G. Arvind who is working in the Advertisement department in 'Times of India' newspaper. He speaks to certain advertisements inserted in 'Times of India' newspaper and there is an insertion of the advertisement issued by the General Secretary, KPCC(I) and the order was placed by Stimulus Communications which makes a reference to KPCC(I) as their clients and he admits that the said advertisement was issued by KPCC(I) through Stimulus Communications Advertising Agency, in the course of cross-examination. In the circumstances, and for the very reasons stated earlier with reference to 'Daily Salar', I do not think the evidence of this witness will help the case of the petitioners in any manner.

Sri Gururaja Rao PW-25 speaks to the advertisements made in 'Samyukta Karnataka'. He admits that the matter was furnished by Stimulus Communications Advertising Agency and that it was done so on behalf of the General Secretary, KPCC(I), Bangalore, in terms of the release order issued to them. The amount had been received from Stimulus Advertising Agency. In the circumstances, the evidence tendered by this witness would not establish that respondent-1 had incurred expenditure in regard to the advertisements made in 'Samyukta Karnataka'.

One Janardhanan who is working in the Accounts department of the 'Indian Express' refers to certain advertisements at Ex. P. 45 to P. 49. He states that advertisements in Ex. P. 45 to P. 49 were published at the instance of Stimulus Communications, which is an advertising agency. He refers to certain other advertisements and states that in one of the advertisements, in the matter sent to them, the name of first respondent was mentioned which is an appeal made to the citizens by first respondent and the headline and the whole format was supplied by the advertising agency. The bill had been raised against the Advertising agency. He states that there was no communication directly from KPCC(I) or AICC(I), but only through Advertising agency such advertisements were

made. He has admitted in the course of cross-examination that whenever advertisements are issued through Advertising Agencies or Services, clients do not directly communicate with them. Again, this evidence does not carry the case of the petitioner any further as stated earlier.

Sri Narayana Rao, PW-28, working as Advertisement Manager in the Printers (Mysore) Limited, proprietors of the publications 'Deccan Herald', 'Prajavani' and certain others, has spoken to the advertisements inserted in the newspaper at Exs. P. 51 to P. 54 and states that those advertisements were published at the instance of M/s. Stimulus Communications Private Limited, an Advertising agency. The entire matter, layout and getup had been furnished by the said advertising agency and in fact the place where the same should be published was also determined by the agency and the relevant release orders were produced before this Court at Exs. D-6, D-7, D-8 and D-9 and the bills in relation to the said advertisements were paid by the Advertising agency thereto. In the course of cross-examination, it is admitted by the said witness that in the release orders the Advertising agency referred to have stated the name of their client as KPCC(I), Bangalore.

Similar is the evidence of one K. Balaji, who is working in 'The Hindu' newspaper at Bangalore. He states that certain advertisements issued by the General Secretary of AICC, New Delhi, was done through their Advertising Agency M/s. Clarion Advertisers.

In the face of this material on record it must be held that the advertisements said to have been issued on behalf of respondent-1 and expenditure incurred thereto is by respondent-1, is not established.

Apart from examination of witnesses in relation to the advertisements in 'Times of India', 'Indian Express' group of papers and Printers (Mysore) Ltd., 'Daily Salar' and 'Dinasudar', no witness has been examined in relation to the advertisement made on 14-6-1991 and no material is forthcoming on record to indicate that respondent-1 has incurred the expenditure in relation to the advertisement made in the Bangalore Evening newspaper on 14-6-1991.

17. Petitioner in Election Petition 2 of 1991 has sought to include in addition to the cost of advertisement, the following items of expenditure :

1. Cost of wall-posters	Rs. 1,00,000
2. Urdu, Kannada, Tamil and English booklets highlighting the achievements of first respondent.	Rs. 2,00,000
3. Cost of erecting cutouts	Rs. 1,00,000
4. Cost of painting walls	Rs. 1,00,000
5. Cost of erecting hoardings	Rs. 1,00,000
6. Mass feeding in nine centres listed in schedule 'E'	Rs. 90,000
7. Cost of Advertisement charges listed in schedule 'F'	Rs. 2,73,605

The pleadings in relation thereto are that the first respondent had himself got printed lakhs of posters in

multi-colours with his portrait appealing to the voters to cast the votes in his favour incurring the expenditure in furtherance of prospect of his election. The cost of printing such posters on a modest estimate would be not less than a rupee per copy. Such posters were found throughout the constituency and the minimum number of such posters would not be less than a lakh of rupees and cost of printing such posters alone will not be less than a lakh of rupees. This expenditure incurred on the printing and publication of such wall posters has not been included in the election expenses submitted by the first respondent and the insertion at the foot of the posters to the effect it is published by the political party to which the first respondent belongs is false. As a matter of fact, the first respondent has published and paid for the posters and the political party has not incurred that expenditure.

The evidence in support of these pleadings is oral, except for two documents produced before this Court at Exs. P. 6 and P. 7. Petitioner has also produced two wall posters one in Urdu and the other in Kannada. In respect of the wall posters, it is set out underneath thereto that the same is published by Bangalore Rural District Congress Committee(I) and printed by Abhimani Prakashana. PW-21 T.T. Kasturi, who is stated to be the Manager of 'Abhimani Prakashana' states that he had experience in printing posters of the nature at Ex. P-7 and he had done such work even in the last Parliamentary elections held in 1991 and Ex. P-7 is a single crown size poster measuring 20×30 inches. The matter thereto was supplied by Gramantara Zilla Congress Samithi and on their behalf Sri Obedulla Sheriff supplied the matter. In his press, blocks were prepared for the purpose of printing the said poster. It was printed on white printing paper. For purpose of printing one such poster, the cost would be about one rupee. The bill was also presented to Gramantra Zilla Congress Samithi on whose behalf Sri Obedulla Sheriff paid the bill. However, no records were available with him at the time of tendering evidence. He further states that there were riots in connection with the Cauvery Water dispute and the records including the bill stated above were destroyed and he had lodged a police complaint in which there is reference to loss of account books and other records.

In the examination-in-chief itself, the witness has categorically stated that the bill was presented to Gramantara Zilla Congress Samithi and the same was paid by Obedulla Sheriff. If that is so, there is hardly any material before the Court to show that any expenditure has been incurred by the first respondent in this regard. Apart from this material, there is no other material produced before this Court by the petitioner to contend that respondent-1 had incurred expenditure in the matter of publication of posters. The oral testimony adduced on behalf of the petitioner though partisan, as characterised by the learned counsel for respondent-1, I do not want to reject their evidence merely on that ground. All that they have stated is there were posters pasted extensively all over the constituency. But, that by itself will not prove that the expenditure thereto was incurred by respondent-1. In order to connect respondent-1 with the expenditure, there must be further circumstances

established which reassure the Court to rely upon the evidence tendered on behalf of the petitioner in that regard. On that basis, I have got to reject the evidence adduced on behalf of the petitioner on this issue. Further, the petitioner has sought to place material before the Court in general terms as to the cost of printing of such material. What is in dispute is not the cost of printing such material, but whether respondent-1 really incurred the expenditure in that behalf or authorised such expenditure to be incurred. On that aspect, there is hardly any evidence worth satisfactory for consideration by this Court.

17.1 The next item of expenditure sought to be included is one relating to a pamphlets published in Urdu, Kannada, Tamil and English. The averments in relation thereto are as follows :

That the first respondent has published booklets in Kannada, English Urdu and Tamil containing the work and achievement he has been during his membership of Parliament for Karnataka and for his constituency. The booklets were elegantly printed in attractive form under his authorship. The booklets were distributed throughout the constituency. The number of copies of the booklets in each language would not be less than 50,000. The cost of printing and publishing the booklets would not be less than a rupee per copy. Estimating the total number of copies in all the four languages at two lakhs, the expenditure incurred on that account alone will be two lakh rupees. In the return of election expenses submitted by first respondent, this expenditure is not included and the same if included would far exceed the limit provided under Rule 90 of the Conduct of Election Rules.

The only booklet produced before this Court is Ex. P. 5 which is stated to be the one published by the first respondent in Urdu under his authorship. No English, Kannada and Tamil booklets are produced before this Court. Several witnesses have been examined in this regard to state that such booklets had been published and distributed throughout the constituency. If really there had been such wide publicity as contended for the petitioner and testified by the witnesses produced before the Court, it would not have been difficult at all to produce atleast one copy in each of these languages before the Court. Moreover, the charge sought to be levelled against respondent-1 is that he has incurred the expenditure in the matter of publication of these booklets. If that is so, the petitioner had an obligation and burden to prove that such expenditure was incurred or authorised by respondent-1. In that regard, the petitioner has not placed any material at all. Not even an iota of evidence is forthcoming. However, the learned counsel for the petitioner wants me to draw an inference by going through the

contents of Ex. P. 5 that first respondent could have alone published such booklets and incurred expenditure.

Even assuming for a moment that such pamphlet had been authorised or even published by respondent-1, but he having incurred expenditure thereto must be established by the petitioner. As stated earlier, no booklets or pamphlets in languages other than Urdu are produced before the Court and there is no evidence worth acceptable that such pamphlets had been published by respondent-1. But, so far as the publication of Urdu booklet Ex. P. 5 is concerned, a translated copy is produced before this Court which indicates that it is published by one Shoba Offset Printing Press, Dharyagunj, New Delhi. The petitioners have failed to examine the publishers of Urdu booklet in order to bring out as to the cost of the booklet or as to who incurred the expenses for the booklet printed. When the best evidence available is not produced before this Court and the petitioner asks the Court to draw inference or mere probabilities when the charge is one of quasi-criminal in nature, I do not think this Court can draw any inference in that regard. As to the number of copies of booklet printed in that regard is left to the imagination of each one of the witnesses. If the printer had been examined, he could have definitely stated the number of copies printed by him which would have pinned down the expenditure incurred in that regard. Petitioner has examined certain witnesses to the effect that the cost of printing such pamphlets would be in the region of Rs. 5 per copy. Those witnesses are stated to have experience in printing. By looking at the printing matter that is composed therein and the number of pages it consists of, the get-up, layout, have estimated the cost of printing such booklet. Even by establishing the cost of booklet, the petitioner could not advance his case unless he connects the same to respondent-1. In that regard, the petitioner has miserably failed.

In order to substantiate that such pamphlets had been extensively distributed in the locality where the elections were held, PW-7 M. J. Ali, who is an Engineer by profession and is stated to be the General Secretary of the Karnataka Muslim Jamayat, has been examined. He states that he received 5000 copies of the pamphlets similar to Ex. P. 5 for distribution to the voters in their office at Cunningham Road, Bangalore and he got them distributed. The witness does not say from whom he received such copies. The petitioner has not made by effort to elicit that information from the said witness. In the absence of any material forthcoming in that regard

that such booklets emanated from respondent-1, no inference can be drawn on the evidence tendered by M. J. Ali who is examined as PW-7. The only inference that could be drawn thereto is that 5000 copies had been received in Karnataka Muslim Jamayat and the same had been distributed. Although the learned counsel for the petitioner was at great pains to explain to the Court that respondent-1 had good knowledge of Urdu by putting his questions relating to the manner in which prayers are conducted in the mosque, when he visited Mecca whether he participated in the prayers, further the rites or rituals that are observed before entering the mosque are all prescribed in Urdu language and are known to respondent-1 and therefore, he must be deemed to have known Urdu language. The first respondent has strongly refuted this suggestion that he knows reading and writing Urdu. But those aspects do not assume any significance or importance in this case because what is in dispute in the case is not the authorship of the document in question but incurring of expenditure in relation to publication and distribution thereof. That aspect is totally lost sight of on behalf of the petitioner. Hence, there is no material on record worth to act upon in the manner suggested by the petitioner in paragraph 23 of the petition. As such, the cost in relation thereto also cannot be included in the expenditure incurred by respondent-1.

17.2 The next item of expenditure referred by the petitioner is the cost of erecting cutouts, painting on walls and cost of erecting hoardings. Some photographs have been produced before this Court to show that certain paintings had been made on walls and hoardings had been erected in connection with the elections held in 1991 and that evidence is adduced to the effect that such hoardings and cutouts had been erected on all important points throughout the entire constituency extensively and paintings had been done on the walls soliciting votes on behalf of respondent-1. Though it may be accepted that such cutouts had been erected, paintings on walls had been made or hoardings had been erected, what needs to be proved in a case of this nature has been lost sight of by the petitioner. Petitioner ought to have placed material before the Court to show that respondent-1 incurred or authorised incurring of expenditure in that regard. Unless the petitioner establishes the same, he cannot say that the expenditure in that regard should be included in the return of expenses by respondent-1. Therefore, details examination of the oral evidence tendered thereto or even the photographs produced in relation thereto may not be necessary. The evidence placed before the Court cannot be stated to be beyond shadow of reasonable doubt that expenditure has been incurred by respondent-1 himself.

17.3 Now I wish to take up the cost of mass feeding in nine centres listed in Scheduled 'E' to the

petition. The mass feeding has been the subject matter of consideration even under charges levelled against respondent-1 under Section 123(1)(A) of the Act that it was by way of treating the poor persons and others with food as a gratification to enable them to vote for respondent-1 and the expenditure incurred thereto is stated to be Rs. 90,000.

Since I have already held that no material is forthcoming to show that respondent-1 himself had organised the programme, the question of incurring expenditure thereto by respondent-1 does not arise. A close scrutiny of evidence tendered by the parties in this regard will show the extremes to which either of them would go. So far as the petitioner is concerned, he would like to contend that in every centre where mass feeding took place, respondent-1 participated and distributed food to each one of the guests; while respondent-1 wants to take the stand that he did not even participate in the condolence meetings on the demise of Sri Rajiv Gandhi, let alone in the mass feeding. The first respondent, I must state, has not come out with necessary candour but has been wary and too cautious in tendering his evidence and the stand of the first respondent that he did not even participate in the condolence meetings on the demise of Sri Rajiv Gandhi is not worthy of credence. At the same time, the stand of the petitioner also cannot be accepted that respondent-1 participated in every one of the programmes and he distributed food to each one of the guests participated thereto though there were hundreds of them. All said and done, the cost of expenditure or expenditure incurred thereto cannot be attributed to respondent-1 in terms of Section 77 of the Act in the circumstances set forth. The evidence adduced thereto is too meagre to be accepted by this Court. Hence, the contentions in that regard are rejected.

17.4 Thus Issue No. 6(b) raised in the petition that respondent had incurred or authorised expenditure in contravention of Section 77 of the Act either in Election Petition 2 of 1991 or Election Petition 6 of 1991 is answered in the negative. So far as Election Petition 6 of 1991 is concerned, certain averments are made in paragraphs 8 and 9 of the petition. But those averments and the evidence of petitioner herself will not carry the matter any far because she has entirely relied upon the material placed before this Court in Election Petition 2 of 1991. For the very reasons stated earlier the answer in regard to issue arising in this regard in Election Petition 6 of 1991 also should be answered against the petitioner.

18. Booth Capturing & Rigging :—The petitioner in Election Petition 6 of 1991 has alleged that respondent-1 committed corrupt practice of booth capturing and rigging as provided under Section 123(8) of the Act. The petitioner alleges that the facts pleaded in regard to the allegations arising under Section 123(7) also constitute facts for the purpose of the present case. The petitioner states that even before the election, she brought to the notice of the Returning Officer and the Chief Electoral Officer about booth capturing and rigging in Hoskote, De-

vanahalli and other segments and requested for proper arrangements to be made to prevent rigging. The Returning Officer had contrary to the directions issued by the Election Commission and the circular issued in that regard, counted the ballot papers in respect of polling booths wherein polling had taken place in excess of 90 per cent and Congress (I) candidate (respondent-1) had secured 90 per cent votes in some of the booths. It is further averred that rigging and booth capturing had taken place more in the rural segments of Devanahalli and Hoskote. The petitioner had even visited the booths in Devanahalli and Hoskote between 3 and 5 p.m. and polling had not exceeded 30 per cent, but surprisingly at the time of counting, it is disclosed that 68 per cent to 78 per cent polling had taken place and it is nothing but the result of rigging. Such heavy polling of votes had never taken place earlier and it had been done only by rigging and the report from the Polling Officer of the respective polling station submitted to the Returning Officer and Chief Electoral Officer would disclose the same and therefore this Court will have to summon the records. In the native place of local M.L.A. Chiklegowda, almost 99 per cent of polling had taken place and it is nothing but rigging. Similar was the case in majority of the polling stations. The pattern of vote, the time at which voting is stated to have taken place and the manner in which the markings are found in the ballot papers of these polling stations either in favour of respondent-1 or respondent-2 amply demonstrate that they are the votes by rigging and hence the same is liable to be declared as such and will have to be excluded from counting in its entirety and recounting or repolling is to be ordered. That the polling officials and the polling agents of respondent-1 and respondent-2 have colluded in Devanahalli and Hoskote to achieve the object of rigging and mark the ballot papers in favour of this respective candidates. In so doing the respective polling officers of the polling stations have also colluded and this would not have been possible, but for the active silence on the part of the Returning Officer in allowing large malpractice in respective polling stations. Such corrupt practice had taken place on the date of poll, i.e., 15-6-1991, at the respective polling stations in the assembly segments of Devanahalli, Hoskote, and varthur in Polling booths 38, 386, 39, 101, 101-a, 114 115 and 226 among other polling stations. That the Returning Officer knew about the rigging and he had been apprised of the same and this is the reason why he did not send the specimen signatures of the election agents of the petitioner to the respective polling officers with a view to enable the candidates of respondent-1 and respondent-2 to have their own way to get the ballot papers rigged.

18.1 Section 123(8) was introduced into the Act by an amendment brought about in Act No. 1 of 1989. The background in which the said provision was introduced is available in the statement of Objects and Reasons. In order to correctly appreciate the contentions raised on behalf of the parties, I shall refer to the same, which reads thus :—

“(vi) Booth capturing and rigging of elections had been on the increase in the recent past. This evil practice takes different forms, ranging from physical threat to the

voter to forcible occupation of polling stations. A large part of our electorate consists of people who are poor and also belong to weaker sections of the society. It is, therefore, necessary to deal with this evil firmly. The Election Law, as it stands, does not contain any provisions to deal with this offence. It has, therefore, been proposed to include specific and penal provisions in the Representation of the People Act 1951, to deal with this offence and make it also a corrupt practice."

18.2 Section 135-A refers to offence of booth capturing and, while making the offence of booth capturing punishable, sets forth an Explanation thereto. However, that Explanation is confined to that section only. Therefore, in order to understand what is meant by booth capturing, we have to look to the background in which the said enactment was made. Booth capturing can take place in different forms either by seizing a polling station or a place fixed for the poll by a person or persons making the polling authorities surrender the ballot papers or voting machines or by taking possession of a polling station and allowing only their own supporters to exercise their right to vote and preventing others from voting or threatening an elector and preventing him from going to the polling station or seizure of a place for counting of votes by any person or doing of these acts by any person in service of Government as explained in Explanation to Section 135-A. In addition to that we may add certain other categories such as winning over the officials of the electoral machinery and with their help and connivance to cast votes on behalf of a particular candidate and preventing others from exercise of their right to vote.

18.3 The allegations in the petition do not disclose as to the exact nature of booth capturing by respondent-1. All that is stated by the petitioner is that there was booth capturing and rigging. One incident of the same is being given as that there was 90 per cent of voting in some places and in one particular polling station 99 per cent polling had taken place. But, that by itself cannot be termed as booth capturing. The petitioner must be in a position to state in which of the polling stations such acts took place, who were the officers concerned, what was the nature of the acts complained of against them, whether the officials themselves were engaged in certain acts or they prevented the voters from casting their votes or the officials were doing them at the instance of respondent-1 or any person on his behalf. Unless such particulars and details are forthcoming, it is difficult to accept such allegations. Moreover, there is hardly any evidence forthcoming in this regard. Petitioner except to state that there was booth capturing and reiterating the allegations made in the petition, has not placed any further material in this regard. So far as counting of votes in respect of certain polling stations where 90 per cent to 99 per cent polling had taken place, the Returning Officer has seen to it that they are separately counted. If that is so, unless petitioners allege and prove that there has been any violation of the provisions of the Act or the Conduct of Election Rules or wrong

counting of votes in these polling booths, no adverse inference can be drawn. Even assuming that there was 90 per cent to 99 per cent polling in certain polling stations, but that by itself cannot be said to be proof of booth capturing or rigging. Petitioner has used the expressions 'booth capturing' and 'rigging' as synonyms or equivalents of each other. Viewed from this angle, I do not think the petitioner has either raised any pleadings in that regard or placed any material before the Court to come to the conclusion one way or the other. Therefore, I must conclude that the petitioner has not discharged the burden cast upon her in this regard and this issue is also answered in the negative.

19. Issue No. 2 in Election Petition 6 of 1991 :

"Whether the pleadings in the petition set out necessary material facts and particulars to constitute grounds for declaring election to be void or are they bad for want of necessary material facts, particulars or due verification ?"

So far as the contents in the petition in relation to material facts and particulars are concerned, I am making reference to each one of them as and when I take up each issue at the appropriate stage. At this stage, under this heading, I wish to consider only as to whether there is due verification in the petition or not.

19.1 The documents produced along with the petition as Documents 1 to 8, 8a to 8g and 9 to 12 are signed as true copies but are not stated as 'verified'. Section 83(1) of the Act refers to the pleadings in the Election Petition and states that the same shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings and any Schedule or Enclosure to the petition shall also be signed by the petitioner and verified in the same manner as the pleadings. But, the stand of the petitioner is that the documents produced along with the petition are true copies of the originals and the petitioner cannot verify as to the contents therein and in this regard has referred to several decisions. I do not think, it is necessary for me to refer to any of them except the decision in *F.A. SAPA-vs-SINGORA* (AIR 1991 SC 1557) which has considered all the cases arising on the point. The Supreme Court in the said case has stated that mere defect in verification is not fatal to the maintainability of the petition and therefore office objection raised in this regard also does not have any significance. The same stands overruled.

20. Issue No. 3 in Election Petition 6 of 1991 :

In Election Petition 6 of 1991 there is an issue whether the petitioner proves that the first respondent or his election agent or other agents or persons with the consent of the first respondent committed corrupt practices of bribery by doing certain acts referred to in paragraphs 6 and 7 of the petition. The pleadings in relation thereto are as follows :

20.1 That after the calendar of events was issued and nomination was filed by respondent-1 various works were done in the Bangalore North Parlia-

mentary constituency contrary to the directions issued by the Election Commissioner in this behalf and this was done on the eve of election to the induce the electorate as a reward and bargain to exercise their franchise in his favour; that respondent-1 got started road metalling and tarring of roads, lanes and sublanes in H.A.L. sanitary area at Kodihalli, Varthur at Kalamanaahalli-Mallur Road metalling, at Mahdevapura—Jelly unloaded for road construction, at G.M. Palya Box type drainage work, at G. M. Palya and Malleshpalya road metalling and tarring, Murugeshpalya road metalling, tarring at Indiranagar Main Road, 100 feet road and 80 feet road, H.A.L. II Stage and various other places; that respondent-1 got through the officials bore-wells and rigs dug at various places in the constituency after the calendar of events were announced; that bore-well rigs at 3 points near Kannada Primary Government School in H.A.L. Sanitary Area at Kodihalli, at Kannada Primary Government School near Burial Ground, near Srinivasa Reddy's house, where the majority of voters|electorate were there, at Old Thippasandra rigs near Maramma Temple, at Kaggadasapura building R.C.C. Rings for water tank construction, at Bayappanahalli three rigs, at Ramamurthy Nagar one rig, at Challaghatta at Hariijan colony one rig, at Thippasandra behind Mahalakshmi Saw Mill one rig, one rig near Srirama Temple, one rig near Yellamma Temple and nearly 34 rigs in Shanthinagar constituency, rigs in Cautam Slum and 4 rigs in Sanjaynagar of Yelahanka; that these rigs have been constructed and carried out to give water to the electorate on the eve of election by spending lakhs of rupees and this has been done at the behest and instructions of respondent-1 through the Ministers and M.L.As in the respective areas; that these works have been got executed through Slum Clearance Board even though these works were not in the estimate of the Slum Clearance Board and these works were executed contrary to law and that many of the slums in which these works were executed were in the private land and not even declared as slums like, New Binnamangala Slum, Indiranagar and Ramamurthy Nagar Tank area and other areas. Similarly, works have been executed at Devanahalli and Vijayapura. Some of them have been completed and some are half constructed. These acts of the first respondent on the eve of election have been done only with a view to woo (though it is stated as woo) the voters and as an offer and promise to the electorate to get the votes as a reward and bargain. Besides this, respondent has also got electric lightings and fittings to the houses under 'Bhagvajiyothe' scheme in Appireddy Palva, had got ration cards distributed at Islampura and various other places and that bus route was provided at Horamavu and hence his election is liable to be set aside.

20.2 Even taking the allegations by themselves as such I do not think they constitute all the necessary ingredients provided under Section 123(1) and (2) of the Act. The law in this regard is very clear. It is not barred under law that no development works can take place at all once the calendar of events are published. What is to be pleaded or established is that it was so done on the eve of election as a bargain for the purpose of getting

votes to a particular candidate. In *Mrs. OM PRABHA JAIN-vs-ABNASH CHAND & ANOTHER* (AIR 1968 SC 1983) it was stated that :

"merely because certain acts of administration are done including the granting of money for upliftment of certain communities and this action of the Minister cannot be construed against him unless it can be established that there was a bargain with the voters for getting their assistance at the election",

However, it was brought to my notice by the learned counsel for the parties the later development in law in *B. RAJAGOPALA RAO & ANOTHER-vs-APPAYYA DORA HANUMANTHU & OTHERS* (AIR 1990 SC 1889). In that case it was contended for the appellants that the High Court has taken an incorrect view that in order to constitute corrupt practice under Section 123(1)(A), where general works are carried out by Ministers or other officials on the eve of elections, they need not necessarily be by way of bargain. In that case, it was observed that in *GHASI RAM-vs-DAL SINGH* (AIR 1968 SC 1191) all that it decided was if the promises given or made amount to a bargain entered into by a candidate for a vote or votes, the same would amount to corrupt practice, but there is absolutely no need to establish that it must be by way of bargain for getting votes that the act was done need be established. However, the Supreme Court did not examine that question having regard to two other decisions which were said to have taken the view that the transaction must amount to a bargain by a candidate with a view to get votes and therefore the decision in *Rajagopala Rao's* case does not assist either party.

20.3 In *HARJIT SINGH MANN-vs-S. UMRAO SINGH AND OTHERS* (AIR 1980 SC 701) it was made clear that payments made by a person as Minister before he was a candidate would not amount to bribery. In that context, it clearly stated in the course of the judgement that it was necessary for the purpose of proving the corrupt practice of bribery to establish that there is an element of "bargaining" in what the successful candidate was alleged to have done for certain villages of his constituency by sanctioning payment as a Minister. In the present case, there is no plea as to who made the offer and that offer was made only for the purpose of getting votes and in the event of such votes not forthcoming, the works would not be executed. Only when these pleas are available it would constitute that there was an element of bargain. Even apart from that except general allegations being made that respondent-1 had managed to get these works done, there is no specific material forthcoming in the entire record, though there is massive material before the Court, to show that respondent-1 himself had been responsible to get the works done. In what manner any relationship or link with respondent-1 is brought out, is not clear, in the execution of the works referred to earlier. Further, no material is forthcoming to show that whether these works had been sanctioned prior to the issue of calendar of events or subsequently. If the works had already been sanctioned prior to issue of calendar of events and executed

pursuant thereto, it would be of no significance. The petitioner wants to rely upon Ex. P-97 which is an advertisement in 'Sanje Vani' dated 19-3-1991 regarding certain developmental works in Shantinagar constituency. But that advertisement itself being dated 18-3-1991 long prior to the issue of calendar of events, the same cannot have any significance or relevance to the issue before me. Therefore, it is unnecessary for me to consider the same. Hence this Court cannot hold that the petitioner has made necessary pleas in that regard nor established the allegations made therein. Accordingly, I must give a negative finding on this issue also.

21. It is alleged that respondent-1 has got printed with the help of Returning Officer more than two lakhs of ballot papers in excess and those ballot papers have been stuffed into the ballot boxes either at the polling stations or during transmission or while counting.

21.1 The Chief Electoral Officer addressed a letter on 23-4-1991 to the Director of Printing and Stationery, requesting him to make arrangements for printing ballot papers at the Government Central Press, Bangalore under strict security. It is also indicated that instructions had been issued to the concerned Returning Officer to send the copies of the list of validly nominated candidates immediately after the date of scrutiny of nominations by 24-9-1991, and also intimate the names of the contesting candidates by telegram or telex printer message immediately after the last date for the withdrawal of candidates i.e. 29-4-1991 to enable him to take advance action to prepare a draft copy. For the purpose of approving the proof, officers would be deputed by the concerned Returning Officers and also for taking delivery thereto. They had also been instructed to arrive at Bangalore by 30th April 1991 and therefore if it would be possible to print all the ballot papers by 30th April 1991. The format and design and details thereto were also set forth thereof with reference to the handbook issued to the Returning Officers. It was stated that the names of the contesting candidates should be printed as appearing in the list of contesting candidates and the name of the constituency should be printed in Kannada and English as regards Bangalore North Parliamentary constituency. We are not concerned with regard to other constituencies. Ballot papers should be printed on Cream Wove paper and should be stitched in bundles of 50 each. Officers would be designated to liaison the work between his office and the office of the Printing Press and certain other precautions were also indicated. The Director of Printing & Stationery had also received a copy of the telex message sent on 24-10-1989 in regard to the printing of ballot. The numbers of all the ballot papers in respect of Parliamentary constituencies where the votes consisted of more than 10 lakhs. It was indicated therein to print the ballot papers up to 999999 in six digits. Thereafter to start a new series in six digits with suffix 'A'. One N. K. Narayan, Deputy Secretary, BDA, was deputed for proof reading, supervision, checking and bundling of ballot papers in respect of Bangalore North Parliamentary constituency. It was also indicated therein to supply 13,78,000 ballot papers serially as indicated in the letter sent by the Deputy

Commissioner who is also the Returning Officer, as per Ex. D-24, dated 2-5-1991.

21.2 The procedure regarding printing and other information has been elicited in great detail before this Court by examining DW-3, Director of Printing & Stationery. He states that he was the Director of Printing & Stationery between 13-10-1986 and 15-1-1993. He indicates that he received a letter as per Ex. D-23 in regard to printing and supply of ballot papers for the Lok Sabha elections and he also received a letter from the Returning Officer regarding printing of ballot papers as per Ex. D-24 and deputing one Narayan to supervise printing of ballot papers for North Parliamentary constituency. The requirement of paper is made depending upon the number of candidates contesting in the election and the number of ballot papers required. Under Ex. P-74 the requirement was made for the issue of paper and the entries thereto are marked as Ex. P-74A and P-74B pertaining to the supply and printing of ballot papers in respect of Bangalore North Parliamentary constituency which are in the quantity of 1436 reams, 2 quires and 10 sheets and again 25 reams and still later 30 reams. Ex. P-76 is a register relating to supply of paper on daily basis and in that register at Ex. P-76A, there is an entry relating to Bangalore North Parliamentary constituency indicating the issue of 30 reams of paper. Ex. P-77 has been produced before this Court which contains the details of printing of ballot papers with reference to the name of the constituency, particulars of candidates, number of ballot papers, quantity of paper required and certain other details and in the entry at Sl. No. 12 which is marked as Ex. P-77A, it indicates the requirement of paper and the number of ballot papers printed with reference to Bangalore North Parliamentary constituency. He states that 30 reams of paper as indicated in Ex. P-76A has been utilised for the purpose of printing ballot papers on account of the wastage that occurs due to jump in the numbering machine in the counter-foil and main ballot paper and mutilation of ballot paper in binding and in other process. The percentage of wastage in such cases ranges from 5 to 10 per cent depending upon the number of contesting candidates and the quantity of ballot papers to be printed. The work would be arranged in respect of numbering of ballot papers by using Letter Press Printing machines. 8-10 Letter Press Printing machines are normally used to print Lok Sabha ballot papers. The arrangement of numbers will be done in such a way that about 10,000 to 20,000 ballot papers will be printed on each machine in one day or the second day, if necessary. If the printing has to be done between 20,000 and 40,000, the numbering will be arranged at 40,000 both on the counter-foil and on the ballot papers and the number of ups. By ups, he means the number of ballot papers that can be printed on a sheet. He states that two ballot papers could be printed in a sheet in respect of Bangalore North Parliamentary constituency in the elections held in 1991. He refers to a register maintained in that regard and that register is marked as Ex. D-25. He speaks to the entries relating thereto and which are stated to be at pages 45 to 50. In Ex. P-76B there is a reference to the expression 'reprint' and the said entry pertains to printing of ballot papers

which became necessary as a result of wastage referred to by him. Ex. D-25 is a register pertaining to the arrangement of numbering machines and the number of Letter Press Printing machines on which the ballot papers have been printed. The portion marked as Ex. D-25A and D-25B are the entries relating to the reprint of ballot papers in the Bangalore North Parliamentary constituency. He also speaks about the quantity of sheets consisting in a ream as 500 sheets. Under Ex. D-26, which is a letter sent by the Chief Electoral Officer on 26-10-1989, a telex message was attached to which a reply was sent by DW-3 as per Ex. P-27 to which I have already made reference. He states that in the printing press, they had used six digit numbering machines for the purpose of printing ballot papers regarding Bangalore North Parliamentary constituency. In the printing process, the numbering will be done in the descending order both on the ballot papers and on the counter-foil. He has shown certain unused ballot papers as Ex. D-16 which contains '000000' preceded by number '1'. The zeros were printed on the printing machines while number '1' has been added by using the hand from the same type high numbering machines. In respect of ballot papers exceeding 10 lakhs, prefix 'A' has been used. With prefix 'A', 3,78,000 ballot papers have been printed. He thereafter refers to a memo issued by the Returning Officer as per Ex. P-80 showing the number of assembly segments, ballot papers assigned, serial numbers thereto and the Assistant Returning Officer attached to each one of the assembly segments who has to take delivery of the ballot papers. In Ex. P-75 which is a book disclosing the issue and acknowledgement of receipt of printing stationary in the Government Press, Receipt No. 2642 thereto relates to supply of ballot papers to the Returning Officer of the Bangalore North Parliamentary constituency and the acknowledgement thereto is at Ex. P-75A. He thereafter refers to a certificate issued by him as per Ex. D-28 by which the surplus of the waste ballot papers printed at the Government Press have been destroyed in the presence of the officers assigned for the purpose. The said certificate had also been communicated to the Chief Electoral Officer and that letter has been marked as Ex. D-29. Ex. P-78 which has been produced in the case by the petitioner in Election Petition 6 of 1991 is characterised as being a proforma of the ballot paper and it does not contain any such serial number. He denies the allegation made by the petitioner that he got printed over two lakhs ballot papers in excess of the actual necessity and allowed the first respondent surreptitiously to take away those ballot papers to rig the booth and he also denies that 30 reams of paper has been used in excess of what was required under law.

21.3 In the course of cross-examination, he indicates the various stages of printing, the officers who had been assigned to different types of printing and the meaning of the expressions 'PWS' and 'PZS' and what types of machines were used for the purpose of printing and the materials used for the purpose of printing. The suggestion that there could be only 5 per cent of wastage has been denied by him and he states that it ranges from 5 to 10 per cent. He also states that 40 to 42 Letter Press machines are

in the Government Printing Press of different sizes and there are 7 Offset machines in the Suburban Press, 6 HMT machines and other 7 Offset machines in the Central Press. He was unable to state in which of these machines he got printed the ballot papers in respect of the Bangalore North Parliamentary constituency. The paper for the purpose of printing the ballot paper is indented for all the constituencies from the Mysore Paper Mills. Ex. P-74 is stated to be the one marked with reference Suburban Press, Bangalore. He refers to Ex. P-110 and P-111 which are the papers indented from Mysore Paper Mills and they indicate that 300 tonnes of paper has been indented. He repeats the quantity of paper utilised for the purpose of printing ballot papers with reference to Bangalore North Parliamentary constituency. He further states that the paper utilised for printing of ballot papers is also known as 'A1' type which measures 86X61 cms. of 19.7 kgs. and that he was not in a position to say that 2,38,540 ballot papers were printed. Further, he indicates that the figures are indicated in the register and out of 300 tonnes of paper indented from the Mysore Paper Mills, he is not in a position to say whether two crores 38 lakhs ballot papers could be printed from 1491 reams, 2 quires and 10 sheets. The ballot papers were thereafter printed and made into bundles of 50 each and checking was done and thereafter binding was made. Two or three machines have been used for the purpose of stitching. No automatic machines have been used. He thereafter refers to the details of work on each day and the manner in which supplies are made to the binding section, how invoices are prepared and so on. He also indicates as to the system of assigning work docket to each of the worker which refers to all the details regarding the name of the work, quantity of paper, by which machine it is printed and by which binding section it is bound. The work dockets are maintained in the printing press but he is not in a position to produce the said work dockets as he is not working in the Printing Press any more. He also refers to a pro forma known as "Daily Time Sheet" which indicates the utilisation of all sections concerned in the printing of ballot papers. There are different sections in the Printing Press, like "Care" Printing Section and "Confidential Section". He denies the suggestion that ballot papers which are mutilated can only be destroyed by the Care Section and the ballot papers in respect of which certificate was issued were kept in a separate room under lock and key and thereafter as per the instructions contained in the handbook of the Returning Officers they were destroyed as indicated in Ex. D-28. He states that they do not maintain any register as to the number of ballot papers destroyed. He states that he issued the certificate as per Ex. D-28 under his signature. He further states that in case of printing ballot papers, they had utilised six digit numbering machine and the letter as per Ex. D-27 is written in the context of the election held in the year 1989 and no such letter has been sent by him in the elections conducted in the year 1991. They have used Type High Printing machine which is utilised on the Letter Press machine. In the Offset Printing machine, numbering is not done. The printing was done in the Offset Printing machine and thereafter Letter Press machines

were used for printing the numbers. The material for printing in the Letter Press Printing machine is given and when sufficient number is ready, the same is fed into the machine subject to the availability. He also refers to the various types of machinery utilised in the printing press under his control and the various types of printing done. He indicates that all the ballot papers in respect of all the constituencies in Karnataka were printed in the Government Central Press and the Government Suburban Press and the records produced before this Court pertain to all the 28 Parliamentary constituencies.

21.4 For printing the ballot papers 'A1' size machines have been used both in Offset and Letter Press. 10 Offset machines in Central Press and 7 Offset machine in Government Suburban Press were used for printing ballot papers. The size of the letter press used for printing ballot papers is 'A1'. There are 12 such machines of different models. He refers to the acquisition of certain other machines and also the non-availability of computerised machine facility. He states that the ballot papers had been printed in the Suburban Press while reprint was done at the Central Press. The officers concerned got the same printed on the basis of the orders placed by the authorised officers and he had not given any instructions regarding the reprint of the ballot papers. He denies the suggestion that no person other than himself could have authorised the reprint of ballot papers.

21.5 In order to test the veracity of DW-3 as to numbering done in the ballot papers, various questions have been suggested to the witness that if three digit numbering machines are available, the last number could be 999. If the numbering machine having facility to print seven digits, the last number would be 999999. If seven digit numbering machine is available and used the seven digits could be printed along with number '1' as shown in Ex. D-6. His attention was drawn to Ex. D-19 and he stated that Ex. D-19 has to be understood as printing ballot papers 999999 and thereafter the 10th lakh ballot paper will have to be printed by pressing number '1' in front of 000000. Under the supervision of the concerned officers, the printers had added that figure. Work docket is maintained in respect of the ballot papers. For the entire constituency, there is one work docket in respect of adding figure '1'. He denies the suggestion that there is manipulation by him in regard to the work dockets. He denies the suggestion that the numbering will have to be done always on the back of the ballot papers if any hand machine is used. He states that there is no hard and fast rule in that regard and for the purpose of convenience and for checking, hand numbering is done on the front of the ballot papers also. The processes undergone in the preparation of ballot papers are stated by him. He states that the letter 'A' is printed along with the numbers in the Letter Press Printing. The letter 'A' is prefix to the numbers. It is true that along with the number only the prefix 'A' has been printed. The abbreviation 'NO' will precede the numbers on the Type High Printing machine. The prefix 'A' will before the abbreviation 'NO'. 'NO'

is attached to the Type High numbering machine itself. Letter 'A' is type face by itself. He denies the suggestion that it was possible to add the prefix 'A' after the abbreviation 'NO' and it cannot be done by using the machines available in the Government Printing Press. At the stage of composing adding the word 'A' before the number would not arise. If there are instructions to add 'A' even at the stage of composing 'A' would be added otherwise not. The attention of the witness is thereafter drawn to printing of lottery tickets and the forms under the Karnataka Sales Tax Act.

21.6 To a question that in respect of ballot papers supplied to Hoskote assembly segment in the invoice book a Ex. P-75 and at Ex. P-75A figures mentioned are referred and a suggest on is put that the figure '1' in these numbers at the beginning had been altered to letter 'A', he denied the suggestion and stated that in regard to Varthur and Devanahalli, the number '1' occurring after the word 'to' should have been 'A' and so also in respect of Devanahalli since the ballot papers bear the numbers beyond 10 lakhs. Pertaining to Ex. P-75A, no correction was sent. He was not in a position to say whether the object M-1 produced before the Court was the one utilised in the Government Printing Press. In regard to Ex. D-25, detailed cross-examination has been made and it was suggested to him that in the last sheet of the book containing Index, a Sl. No. 12 'Bangalore North' is noted, and is accepted by him. The number 45 has been written and struck off and number 46 had been inserted and at page 45 of Ex. D-25 at column No. 5 the machine number is given. The machine referred thereto pertains to Letter Press machine. He cannot say whether this is the only record which is produced before the Court which contains the details of printing on the Letter Press machine. Further, he denies the suggestion that there were only four Offset machines in the Central Press and in the Suburban Press. He denies the suggest on that there are only 10 Offset Printing machines even after the acquisition of 6 HMT machines in 1992. Under Ex. D-25 at page 45, the last column thereto pertains to the impressions or print. He could not say by referring to that whether it includes wastage or not without verifying other records. The printing is done by arranging the numbers and not segment-wise. The serial numbers of the ballot papers would be checked by the departmental officers and delivery thereof was taken. On the top of each bundle of 50 ballot papers a number was given. He denies the suggestion that when the ballot papers were reprinted the numbers which had been given earlier had been given subsequently. In Ex. P-77 at Sl. No. 12, work docket number is given as 'P9238' in respect of Bangalore North Parliamentary constituency while in Ex. P-74A and P-74B it is shown as 'P295' and in Ex. P-76B also it is shown as 'P295'. Ex. P-74 pertains to Suburban Press whereas Ex. P-76 and P-75 pertain to reprinting in Central Press. Ex. P-77 is an abstract register relating to Central Press. He denies the suggestion that his statement that 8 to 10 Letter Press machines had been used for printing the ballot papers in regard to Bangalore North Parliamentary

constituency as false. In further cross-examination made by the petitioner's counsel in Election Petition 2 of 1991, he again reiterated the position in regard to printing of ballot papers. He also referred to certain other constituencies where large number of ballot papers had been printed. In Kanakapura constituency, 13,85,800 ballot papers had been printed and the next highest number of ballot papers printed is in regard to Bangalore North Parliamentary constituency and the one next to it is Bangalore South constituency. He refers to the quantity of paper used for printing of ballot papers in respect of Kanakapura constituency as 363 reams, 5 quires and 3 sheets and his attention was drawn to the quantity of paper utilised for Bangalore North and South Parliamentary constituencies. He made it clear that in respect of Bangalore North Parliamentary constituency, the paper was utilised on three occasions as indicated in Ex. P-77. He stated that the printing of ballot papers is done with utmost promptness, precision and in great secrecy. He denied the suggestion that the wastage in regard to printing of ballot papers would be minimum and the quantity of paper indented in Ex. P. 110 and P-111 is the estimated quantity purchased for all the 28 Parliamentary constituencies in Karnataka.

He was also called upon to give measurement of different types of paper used by giving him a measurement tape. The ballot papers at Ex. D-15 disclose the size of the ballot papers and two ballot papers could be printed in 'A1' size paper. He denied the suggestion that more than two ballot papers could be printed in 'A1' size paper so far as Bangalore North Parliamentary constituency is concerned. Thereafter, he again reiterates the quantity of paper utilised.

21.7 Now, I have to examine whether actually the ballot papers were printed far in excess of the requirement, as contended for the petitioners and whether in fact two or two lakhs fifty thousand ballot papers were printed in excess. In fact, at one stage of the arguments, it was suggested on behalf of the petitioners with reference to Ex. P-75 that, actually a total quantity of 13,78,000 ballot papers had been delivered to the officers concerned twice, once to Sri Narayan on 16-5-1991 and again to the Returning Officers as indicated at Ex. P-75A and thus, not less than double the quantity of ballot papers required had been printed. In order to test the correctness of the stand of petitioners it becomes necessary to notice a few features in this case. In so far as the printing of ballot papers is concerned, in the registers maintained by the press and as indicated in Ex. P-77, it is only in relation to Bangalore North and South Parliamentary constituencies where there are more than thirty candidates the number of 'ups' is two. In respect of Kanakapura constituency, where there are 11 candidates contesting the election, the number of 'ups' is eight. Depending upon the number of candidates, number of ballot papers were printed in each sheet. Thus, it would be indisputable that in view of the oral evidence tendered by DW-3 and the register indicating that only with reference to Bangalore North

and South Parliamentary constituencies, the number of 'ups' have been two. In respect of other constituencies, it is either four or eight or even sixteen. Thus, the number of 'ups' in relation to each sheet of paper that was utilised could be ascertained with reference to number of candidates contesting the elections. Therefore, the evidence tendered by DW-3 that, out of each sheet only two ballot papers can be printed must be accepted so far as Bangalore North Parliamentary constituency is concerned. If that is so, out of a total quantity of paper utilised in respect of Bangalore North Parliamentary constituency which is 1491 reams, 2 quires and 10 sheets, if calculation is made and figures arrived at comes to 7,15,738 sheets or with two 'ups' in each sheet 14,13,476 ballot papers. Therefore by no stretch of imagination can we say that two lakhs ballot papers were printed in excess of the quantity indicated in the register.

21.8 Now let me consider the theory that if two lakhs ballot papers could not be printed in excess of the quantity required, from where this excess of ballot papers came from and supplied the same to the concerned officers as contended for the petitioners. In Ex. P-75, there is no doubt indicated that at page 2642 the said officer Narayan 'received the contents correctly as per invoice and contents of the invoice checked in my presence and found correct'. On the reverse of the said sheet, the Assistant Returning Officers have indicated the receipt of different sets of ballot papers. A perusal of the book Ex. P. 75 with reference to Bangalore South Parliamentary constituency also indicates the same that the officer deputed has received 13,46,200 ballot papers. On the reverse thereof, again 8 Assistant Returning Officers have received an equal quantity of ballot papers. So is the position with reference to Kanakapura constituency also. In respect of the constituencies coming within the Bangalore District, this is the pattern. In respect of other far off places, only the concerned officers have received those ballot papers and despatched them or made other arrangements for despatching the same. This pattern will clearly indicate that there are no two sets of ballot papers, one set being supplied to the officer indicated in the letter sent by the Returning Officer and another set of ballot papers given to the Assistant Returning Officer as indicated in Ex. P-80. This theory was not advanced either in the petition or when DW-3 was in the witness box but only in the course of arguments. When DW-3 was in the witness box, no suggestion was made to him at all that one set of ballot papers indicated in Ex. P-75 had been given to the officer concerned and another set of ballot papers had been given to the Assistant Returning Officer as in Ex. P-75A. The flaws in the arguments are patent and cannot be accepted.

21.9 Now let me take up for consideration the argument advanced regarding the authenticity of the book produced before this Court as per Ex. D-25. In regard to Ex. D-25, it is stated that it was a bolt from the blue and it was not summoned from any of the officers concerned to produce along with other documents and the witness DW-3 himself had

produced this document. No questions have been put to DW-3 as to how he got possession of this book, under what circumstances he got the book and what made him to produce this book before the Court. If only these questions have been put to him, he would have explained as to the importance of the said book or how he got possession of the same or what arrangements he made to get the book to the Court. No suggestion has been made to him that it is not a book maintained in the Printing Press at all. On the other hand, cross-examination has proceeded as if the book has been maintained in the Printing Press and the entries relating thereto have been closely scrutinised. This book is fairly important for purpose of indicating the numbering that had been done on the ballot papers. At page 45, on the top, there is reference to "Bangalore North Parliamentary constituency", the number of candidates is indicated as 31, total number of ballot papers required is 13,78,000 and the number of 'ups' is indicated as 2. The work docket P9328 is indicated. Thereafter, we get the numbering arrangement made by the concerned official. There are initials of the concerned officers as to checking of the numbers and ticking to indicate that it had been checked over and over again. It is indicated therein that the prefix 'A' has been added to ballot papers after the ballot papers numbering 10 lakhs had been printed. That is clear from page 48. It is only thereafter 'AO1' onwards and up to 3,78,000 ballot papers are printed. In the reprint there have been 10,000 copies relating to two entries and also bearing the prefix 'A'. Thus the authenticity of the book now produced before the Court cannot be doubted and proves that 'A' series after 10 lakh ballot paper has been printed up to A-3, 78,000.

21.10 A question has been raised before me that there are no ballot papers printed with prefix 'A' and it is possible to print the ballot papers even bearing 7 digit numbers. But whether the 7 digit numbers were available in the Press or not and as to how many 7 digit number machines or were available in the Printing Press and whether the same were available in the Suburban Press or the Central Press are all of not much materiality. The question for consideration is, what was in fact done in the Printing Press. In the present case, as indicated by DW-3 what was done has been explained and detailed reference to the same has been made while summarising the evidence of DW-3. Prefix 'A' was given to a different set of series and printed after the 10th lakh ballot paper. Possibly the understanding of the officer concerned of the telex message in printing the 10th lakh ballot paper may not be correct. But, it is clear that the 10th lakh ballot paper had been printed as per the register maintained at page 48, Ex. D-25. That may not be of much materiality in considering the question whether 'A' series of ballot papers were printed in about 3,78,000 numbers. We are further fortified on this aspect of the matter that 'A' series had been printed by a reference to two documents which were made available and that is a communication sent by the Chief Electoral Officer to the Government. Ex. D-21 is a letter sent by the office of the Chief Electoral Officer to the Election Commission indicating the two cancelled ballot papers as indicated in the

statement enclosed thereto in respect of all Parliamentary constituencies except, Gulbarga, Chikballapur, Dharwad North and Dharwad South Parliamentary constituencies in respect of which communication had already been sent by the concerned Returning Officers. Enclosure to this letter is available at Ex. D-109. That clearly indicates that there has been 'A' series in respect of several Parliamentary constituencies and not merely with reference to Bangalore North Parliamentary constituency. Therefore, the theory that is sought to be developed on behalf of the petitioners that 'A' series was added only in respect of Bangalore North Parliamentary constituency cannot be accepted. This is also fortified by the register, Ex. D-25 where a reference to each one of these Parliamentary constituencies where 'A' series had been indicated and counter checked. To assure myself, though the parties concerned have examined DW-3 in this regard, I have over and over again checked up with those entries and found that there are entries in relation to these Parliamentary constituencies also. Therefore, I must accept the evidence of DW-3 that 'A' series had been printed in respect of Bangalore North Parliamentary constituency also.

21.11 The question now is confined only to 3,78,000 ballot papers printed, as contended on behalf of the petitioner. In that regard, petitioners contend that the printing had not been done in one Press but in different Press and that the register had been manipulated. The register at Ex. P-74 at page 91 where Ex. P-74A and 74-B are referred to, the work docket number given is P-295 whereas in Ex. P-77, the work docket number given is P-9238 and therefore there are two sets of papers one under the work docket No. P-295 and other with reference to work docket No. P9238. It is also submitted that the register Ex. P-74 has been manipulated by adding the expression 'Suburban' between 'Government Press' and produced. Though this argument looks somewhat attractive by merely looking at Ex. P-74, a closer scrutiny discloses that the entire register had been maintained only by the Suburban Press. The Index itself will indicate that there is a certificate that this book contains pages 1 to 200 and is signed by the Joint Director of Printing & Stationery in charge of the Government Suburban Press. Thereafter all the material pertains only to Suburban Press, and the quantity of paper utilised for various types of work that are made. In fact, on this aspect, no cross-examination has been made by the petitioners in either of the two petitions with reference to the adding of the expression 'Suburban' in page 91. Whether that particular expression is added in page 92 or not, the entire register relates to Suburban Press. Therefore, that part of the argument has no significance.

21.12 The question now to be considered is, if ballot papers had been printed with reference to the Parliamentary elections as indicated in page 91 with reference to various constituencies in the Suburban Press and work docket numbers thereto given is of different types starting from P-218 onwards, it becomes difficult to accept the case setup by the petitioner that work docket number P9238 is another work docket for the purpose of printing additional ballot papers. The possibility of printing excess quantity of ballot papers, on the basis of the quantity of paper utilised for the purpose of printing the ballot papers is ruled out. The work docket referred to in P9238 is with

reference to the numbering available in Ex. P-75 while in the printing of ballot papers, the work docket number given is P295 and that was confirmed by DW-3 also. So, not much can be made of by the arguments that by giving two work docket numbers, one in relation to printing of ballot papers and another in numbering the same which was done in the Central Press and in the Central Press, reprint has been done using work docket number P9238. It is clear that whatever work was done in relation to Bangalore North Parliamentary constituency in the Central Press, the work docket number is P9238. Therefore, I am of the view that the argument that same numbers have been given to different set of ballot papers cannot be accepted.

21.13 According to the petitioners the binding was over on a particular date i.e. on 11-5-1991, but the register maintained at Ex. P-77 indicates that the date of issue for binding as 11-5-1991 and date of issue for departmental checking was on 12-5-1991 and it was issued on 16-5-1991. It cannot be said by looking at this register whether actually everything was kept ready by 12-5-1991 itself but it was sent to the department for checking on 16-5-1991. By an inspection of the books one cannot draw an inference that only on knowing that the ballot papers were printed in excess Ex. P-80 has been issued. The anxiety of the Returning Officer was to secure 13,78,000 ballot papers and he has given a particular pattern of numbering. The numbering given is as per Ex. P-75A which is as follows :

1. 84 Shanthinagar 1 to 1,40,000 = 1,40,000
2. 85 Shivajinagar 140001 to 233500 = 93,500
3. 86 Bharathinagar 233501 to 35100 = 17,500
4. 87 Jayamahal 351001 to 523500 = 1,72,500
5. 88 Yelahanka 523501 to 812500 = 2,96,000
6. 90 Varthur 812501 to 1081500 = 2,62,000
7. 98 Devanahalli 1081501 to 1225500 = 1,44,000
8. 99 Hoskote A225501 to A378000 = 1,52,500

which fits into the numbering available in Ex. P-80 also except in regard to assembly segment of 99 Hoskote where 'A' has been written. It is not available on record as to whether any communication was sent either by the printing Press or the said N.K. Narayan to the Returning Officer as to the pattern in which ballot papers had been printed nor is there any indication to the effect that the Returning Officer was in the know of fact that ballot papers in excess of 10 lakhs will have to be printed with suffix 'A' as indicated in the telex message sent to the Chief Electoral Officer. If that is so, it cannot be said that the Returning Officer knowingly fully well of the printing in the press had sent a communication as per Ex. P-80 and the Assistant Returning Officers have also accepted the ballot papers as they are. But one thing is clear that each one of them have taken care to check the number of ballot papers received by them. May be one such instance is the correction made by the concerned Assistant Returning Officer in regard to Hoskote constituency having looked into the ballot papers, he noticed the letter 'A' instead of number '1' with reference to Ex. P-80. If only an attempt had been made by the concerned parties to examine the concerned Assistant Returning Officers, this position could have been clear, but they have chosen not to do so. In that event, no inference can be drawn that the ballot papers issued to the con-

cerned Assistant Returning Officer did not contain 'A' series at all.

22. Now I shall take up for consideration the other violations alleged against the Returning Officer in the conduct of election in question. Several allegations have been made in that regard and the principal allegations may be enumerated as below :

- (1) That the petitioners had not been furnished with voters list.
- (2) That polling station has been changed without prior intimation.
- (3) That the polling agents had not been allowed entry into the polling stations.
- (4) That the ballot boxes had not been duly transmitted in terms of the relevant rules.
- (5) That the counting agents had not been allowed entry into the counting halls and several irregularities had taken place in the matter of counting.
- (6) That irregularities were committed in the declaration of results.

Supply of Voters List

22.1 It is alleged by the petitioner in Election Petition 6 of 1991 that she had not been supplied with proper voters' list. But certain documents have been made available before this Court as per Ex. D-1 dated 27-3-1991, Ex. D-2 dated 20-5-1991, Ex. D-3 on which there is an endorsement of having received two sets of voters' list on 9-5-1991 and Ex. D4, on which there is an endorsement of having received the voters' list pertaining to Hoskote assembly constituency. By that the respondents want to contend that voters' list has been received by the concerned parties. It is stated that in the 'Handbook for Returning Officers' there is a requirement to supply voters' list to the concerned parties and also supply to the contesting candidates a list of polling stations and the areas covered by each of such polling stations, serial numbers of voters in respect of each polling station and also the date of poll in respect of each polling station and forms for appointment of polling and counting agents. The case of the petitioner is that electoral rolls will have to be supplied to the concerned parties. It is the stand of the respondents that party functionaries have received such voters' list whether the party functionaries received such voters' list or not could be ascertained by examining the concerned party functionaries, but the petitioner has not chosen to examine any party functionary in this regard. It is only the say of the petitioner that such voters' list has not been supplied to the party functionaries. Apart from this lacuna in the evidence tendered, the Supreme Court in J.K. CHODHURY vs-BIRENDRA CHANDRA DUTTA (46 ELR 66 SC) with reference to non-supply of supplementary list of voters' prior to the election, held that it would not be sufficient ground to upset an election under Section 100(d)(iii) or (iv) of the Act. Hence non-supply of voters' list, even if true, is not fatal to the election.

Change of Polling Station without prior intimation

22.2 The change in the location of polling station without approval of the Election Commissioner or change of polling station by the Presiding Officer would not at all matter as indicated in S' KRISHNA SELOT-vs-RAM CHARAN PU.

(41 ELR 50). Therefore, the contention advanced on behalf of the petitioner that in Bairathi there was change in the polling station from one point to another without information to the concerned candidates would not materially affect the result of the election. It is also urged on behalf of the petitioner that there has been incorrect list of polling stations supplied to the candidates and the voters' list given to the respective candidates has not been properly marked. Even such a mistake would not materially affect the result of the election as has been held by the Supreme Court in *PAOKI HAKIP-vs-RISHANG* (39 ELR 431 SC) and also *RAM NATH-vs-CHAJJU RAM* (41 ELR 354 SC), so also by this Court in *SANGAPPA-vs-SHIVAMURTHI-SWAMY* (23 ELR 51 Mys HC).

Petitioner in Election Petition 6 of 1991 referred me to the electoral rolls in respect of a Parliamentary constituency to point out to me that the locality of the polling station, place in which it is located, area of the location and Part number had not been clearly indicated. As regards the location of the polling station, I have already adverted to the matter. As regards the allotment of voters to different polling stations, one can see the last column. It is the contention of the petitioner that it is not clearly stated from what number to what number the voters were covered in that area of the area from which point to which point is also not made very clear.

The area of the polling station has been indicated in column No. 4, whereas in column No. 5 it is indicated "whether for all voters men only or women only". In that it has been stated as 'All' of the voters in that particular segment. So also for each one of these areas such indication has been given. Therefore, the ambiguity supposed to be raised by the petitioner is not clear. As held by the Supreme Court, incorrect list of polling stations by itself will not materially affect the result of the election. It is suffice if the voters have understood in which polling station they have to cast their vote and have cast their vote in that polling station. Therefore, that part of the contention also cannot be accepted.

Non-admission of Polling Agents

22.3 The next question now to be considered is whether not admitting the polling agents in the respective polling stations has affected the conduct of elections in the said case or not. In that regard, the stand of the petitioners is that they had supplied as required under the relevant Rules the necessary forms appointing the respective polling agents and also their specimen signatures, however, on the ground that the specimen signatures of the concerned candidate or the election agent had not been received at the respective polling stations the concerned officers did not admit them into the polling stations. Let me have a look at the evidence before the Court in this regard.

PW-1 in Election Petition 2 of 1991 is the petitioner himself. He states that he had sent respective polling agents to respective polling stations along with appropriate forms. In large number of polling stations his polling agents were not let in. He toured

the entire constituency on the date of election. He came to know that most of the Presiding Officers had refused to admit the polling agents who were acting on his behalf. On that day evening he came to know from his Election Agent that one Salauddin who had to attend the polling station behind Ambedkar Medical College was not admitted and has been detained in the polling station and only at the intervention of the Election Agent he was released. That polling agents of first respondent alone had been allowed. On account of the absence of polling agents on his behalf, there was every possibility of impersonation and other malpractices being committed. Several persons told him of such impersonation later on and there was every chance of impersonation and casting of votes on behalf of dead persons.

In the cross-examination of petitioner in Election Petition 2 of 1991 it is elicited that in respect of Polling Station No. 225 as indicated in Form 16 the total number of votes polled in that booth is 144 and petitioner had secured 94 votes while the first respondent had secured 43 votes. Therefore, the evidence of the petitioner suggests that there was no rigging as such even in the absence of said Salauddin at the said polling station. It is also suggested to the petitioner that on account of the absence of the concerned voters there could not have been any rigging in the manner suggested for the petitioner.

Considering the pattern of voting in each of the polling stations even where polling agents were not supposed to have been admitted, an investigation thereof would disclose that in several polling stations the petitioners have secured more votes than first respondent. Therefore, there was impersonation arranged on behalf of respondent-1 or any other kind of rigging having taken place is difficult to acceptance. Moreover, under Section 51 of the Act what is required to be shown by the parties concerned is, if the polling agents or counting agents are not present in respect of an act or thing required or authorised under this Act to be done in the presence of the polling or counting agents, that such an act is not duly done. If otherwise, valid. Therefore, it is the duty of the petitioners to demonstrate that something was not done duly in the polling station. Petitioners have not made any attempt as to how many impersonations have taken place and in which of the polling stations, much less have they able to place before the Court the number of votes cast in the name of dead persons or so on or even the bare allegation that respondent No. 1's agents managed to see that votes have been cast heavily on behalf of respondent-1, because the voting pattern belies such a contention. In that event, it is very difficult to accept the stand of the petitioners that absence of polling agents in the respective polling stations has materially affected the result of the election as such.

Let me refer to the other evidence adduced on behalf of the petitioners in this regard. PW-2 is the Election Agent of petitioner in Election Petition 2 of 1991. He states that he had appointed the polling agents and signed the necessary forms in that regard and he had furnished the specimen

signatures also in the prescribed form and he made arrangements for appointing polling agents well in advance and had more than 1600 polling agents and he was going round the constituency to supervise the work done by their polling agents. When he went to the polling station behind Ambedkar Medical College the polling agent appointed to that polling station was standing outside. His name is Salauddin. He enquired with the Presiding Officer of the polling station as to why the said Salauddin had not been allowed. He informed him that he had not produced the necessary form which contained the signature of petitioner or his election agent nor he had received intimation in that regard. Thereafter, he furnished the necessary form again and the said Salauddin was allowed inside the polling station. This evidence obviously shows that the polling agents did not have the necessary form in order to enable them to gain entry into the polling station as required under the relevant rules wherein they had to furnish the appointment letter issued by the candidate or his election agent.

Here, a reading of the deposition of PW-2 would make it clear that he had been informed that the said Salauddin had not produced the necessary form which contained the signature of the petitioner or that of his election agent and on furnishing of the same, he was allowed inside the polling station. It is not as though there is any attempt of the polling officers not to let in to the polling stations even though they possessed necessary forms.

PW-3 is one Doddannaiah. He was in-charge of the Shanthinagar assembly segment. He deposes to the effect that the petitioner had appointed polling agents with respect to all polling stations in Shanthinagar assembly segment and he admits that they were able to go and work in the respective polling stations. He had made arrangements to send them. In some polling booths some of their agents were not allowed entry. The Presiding Officers in some of the polling stations did not allow entry into the polling stations to the polling agents of the petitioner on the ground that they had not made available the necessary forms in that regard under the signature of the candidate or his election agent. It is not the stand of the witness at all that specimen signatures had been sent to the concerned Presiding Officer to enable him to verify those signatures on the forms which were supplied by the polling agents themselves. If the petitioner had chosen not to furnish appropriate forms to the concerned polling stations, he has to blame himself.

PW-4 is one Haridas in-charge of Shivajinagar assembly segment. He had arranged for two polling agents in respect of each of the polling booths coming in his division. He states that although necessary authorisation had been presented before the Presiding Officers of the polling stations, they were not allowed entry into the polling booths, except in respect of two polling booths Nos. 58 and 59, and in polling booths 60 to 66 they were not allowed entry. He states that there was some confusion that the authorisation had not been given by the candidate and they had not been allowed entry into polling booth because they had not obtained the appointment letters from the candidate. While the case of the petitioners that for want of specimen signatures the respective

polling agents had not been let into the polling station, in the course of evidence, the stand is different. That stand is that appointment letters had not been issued by the candidate. However, they were allowed entry subsequently.

PW-5 is one B. Sudhindra, a resident of Devanahalli town. He was supervising the election process on behalf of the petitioner. He states that polling agents had been appointed in respect of each polling station on behalf of the petitioner in the area in which he was in-charge. The polling agents complained that the signature of election agent in the letter of appointment did not tally with the official record, as was informed to them by the concerned officials in the polling station and on that ground they were not allowed entry into the polling stations. Thereafter, he made several attempts with the concerned officers and made proper arrangements for entry of such polling agents into the polling station. This witness has been categorical in his statement that the polling agents could not gain entry on account of the fact that their specimen signatures did not tally with those in the official record. It is not the case of the witness that specimen signature had not been sent to the concerned polling station. On the other hand, the case set up by him is that the signatures do not tally. That obviously means that the specimen signature was available in the respective stations.

So also is the evidence of PW-6 Mohammed Ibrahim. He states that the polling agents on behalf of the 17th respondent were appointed prior to the election and necessary forms had been furnished to the concerned officials one day in advance of the election in respect of each one of the polling agents and it was also signed by the candidate. He saw some of the polling agents of respondent-1 inside the polling station and he identified himself as Election Agent or respondent-17 and thereafter he was allowed to enter the polling station. He was informed of the reason as to why polling agents were not allowed inside because the signatures on the forms did not tally with the specimen with them. Again, it is not the case of the witness that there was no supply of specimen signature, but only tally of the same. The pattern of evidence tendered by the other witnesses in this regard is more or less the same.

No polling agent who had been refused admission into the polling station has been examined to explain to the Court what exactly was the difficulty experienced by him. At least by way of sample a few in respect of different segments could have been examined. The version given by the witnesses examined before the Court are not uniform. While the plea raised in the petition is that specimen signatures had not been sent to the concerned Presiding Officers of the polling station, the evidence before the Court if, as some of the witnesses say, is that necessary forms are not properly filled up or available with the polling agents, while some other say that the signatures contained in their forms did not tally with the specimen signatures available with the Presiding Officers. Further it is not proved that the absence of polling agents or on account of their non-admission or otherwise by itself has materially affected the result of the election in any manner. Therefore, I do not think this aspect needs further consideration.

So far as Election Petition 6 of 1991 is concerned, the petitioner except examining herself, has not examined any witness, as stated by me earlier. No polling agent or election agent has been examined in substantiation of the case set up by her that polling agents had not been admitted into the polling stations and by non-admission of the polling agents into polling stations, what is the effect is also not made clear. On the other hand, in the cross-examination, this is what she says :

While denying the suggestion that her polling agents had been allowed entry in the rural areas and in the urban areas, her attention was drawn to Ex. P. 56E 129 which pertains to polling station No. 124 Doddabommasandra in which it is shown that the petitioner had secured 212 votes, while respondent-1 secured 110 votes and respondent-2 secured 270 votes. In Ex. P. 56E 130 which is also in Form 16, it is indicated that petitioner had secured 10 votes, respondent-1 had secured 150 votes and respondent-2 had secured 115 votes. Ex. P. 56E 130 pertains to polling station No. 126 BEL Sports Club. Ex. P. 56E 131 pertains to 126 BEL Sports Club left side Room No. 2, 126 Doddabommasandra. In that sheet it was disclosed that she had secured 117 votes, while first respondent had secured 86 votes and second respondent 106 votes. Ex. P. 56E 132 pertains to polling station 88/127 BEL Sports Club Doddabommasandra and it discloses that she had secured 134 votes while first respondent has secured 87 and second respondent 132 votes. Ex. P. 56E 133 pertains to polling station 88/128 and the sheet attached thereto discloses that she had secured 220 votes, while first respondent secured 116 and second respondent 44 votes.

These are the polling stations in respect of which complaint has been filed by the Election Agent of the petitioner that polling agents had not been allowed entry at the early stages of polling. Even in respect of those polling stations where polling agents were stated to be not present, the votes secured by the petitioner are far higher than that of the first respondent or even the second respondent. If that is so, the stand of the petitioner that absence of polling agents had materially affected the result of the election does not stand to reason to all.

Mustering & Demustering

22.4 On the question of Mustering and De-mustering the ballot papers, PW-1 states that under Ex. D-2 the particulars thereof have been set forth and Ex. D-2 pertains to Shivajinagar Assembly segment. It is only in respect of that segment that some evidence has been attempted to be tendered before the Court. In respect of other segments, no material is placed before the Court to show that there has been any violation of the Rules. In respect of Shivajinagar assembly segment what is stated is that from all the polling stations the ballot boxes had to be obtained at the counting centre and from certain assembly segments the ballot boxes had reached the

counting centre directly and from some other polling stations of certain assembly segments they did not reach the counting centre in that manner. The ballot boxes were taken from Shivajinagar assembly segment to the Corporation Junior College, Tasker Town, Bangalore. In that regard, he received information in the night that at the time when the ballot boxes had been transported to the Junior College at Tasker town, certain vehicles with workers of the first respondent with the Congress flags were reaching the said building and that those vehicles were allowed in and their workers were not let in. The election agent who was with him at that time and certain others were asked to go to the said premises. By the time they reached the said premises, the Congress workers were not there. At that time one S. Rajagopal, election agent of the first respondent, son-in-law of the first respondent along with Congress workers came in a jeep was the information given by Mohammed Ibrahim who is an election agent of respondent-17 who lived near his residence, were not allowed to enter the premises. However, Rajagopal and Mohammed Yaseen came out of the place. The said Mohammed Yaseen and Rajagopal having been allowed in the premises, the election agent Sri Mallikarjun, Mohammed Ibrahim and others demanded that they should also be let in and at that time, Rajagopal and Mohammed Yaseen came out of the premises. Apart from this, nothing else has been stated by any of the witnesses.

In the course of the cross-examination, the petitioner's attention was drawn to Form 20 and the total votes polled in respect of Shivajinagar assembly segment. Total votes polled was 31,975. Petitioner in Election Petition 6 of 1991 had secured 11,124 votes, respondent-1 had secured 10,149 votes, while the petitioner in Election Petition 2 of 1991 had secured 9690 votes. Therefore, the question that by reason of any defect in mustering or demustering of ballots in relation to Shivajinagar assembly segment has affected the result of the election, does not arise at all and would be of no materiality at all because it was the petitioner in Election Petition 6 of 1991 who secured the highest votes in that segment. Consequently, I do not understand how the petitioners could contend that even so as a result of defective mustering and de-mustering of ballot boxes the same has resulted materially affecting the result of the election. Hence, the contention advanced on behalf of the petitioners that there has been defect in transporting the ballots is not tenable, much less has it been established that even if there has been any defect, the same has materially affected the result of the election. Therefore, that issue also will have to be answered against the petitioners.

Votes Wrongly Counted

22.5 Now, I wish to take up the issue relating to the petitioners' contention that votes have been wrongly counted in favour of the first respondent, calling for interference by this Court.

On this aspect of the matter, the law is well settled. The Supreme Court in *RAM SEWAK YADAV vs. HUSSAINKAMIL KIDWAI AND OTHERS* (AIR 1969 SC 1249) took the view that an order allowing inspection of ballot papers or recounting is and must be passed as an Interlocutory order in the course of trial of an election petition.

On such inspection, pleadings have to be amended and appropriate issues raised thereto. In permitting such inspection of records, the Court has to take into consideration that no formality has been laid down, although some Courts attach weight to the margin of difference in votes between the different candidates or specific allegation made with reference to the improper acceptance or rejection of votes and evidence led, if believed, would result in materially affecting the result of the election, that is, nor merely in tilting the total number of votes secured by the candidates as such, but in upsetting the result of the election as such and nullifying the election of the returned candidate. Various types of cases have been considered in the course of the judgment. Merely because there was absence of some formalities or that the counting of votes was not properly done, inspection of documents or recounting cannot be allowed and allegations to that effect alone would not be sufficient. Specific objections will have to be raised as to the nature of the defect in counting or how the miscount resulted. The court have taken note of the following conditions in the matter of granting inspection :

- (i) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (ii) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
- (iii) That the Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
- (iv) That the Court must come to the conclusion in order to grant prayer for inspection that it is necessary and imperative to do full justice between the parties;
- (v) That such inspection should not be allowed to enable the applicant to indulge in a roving enquiry with a view to fish materials for declaring the election to be void;
- (vi) If special facts are alleged in a given case, a sample inspection may be called for to lend further assurance to the prima facie satisfaction of the Court already drawn as to the truth of the allegations made in respect of recounting and not for the purpose of fishing out materials.

In *Shashi Bhushan-vs-Balraj Madhok* (AIR 1972 SC 1251) the allegation was that the election was rigged by process of chemical treatment of ballot papers. The plea was sought to be proved not by any direct evidence but by inspection of ballot papers. The High Court allowed such inspection in view of the serious nature of the allegations. The Supreme Court upheld that order on the ground that in all such matters the Court's aim should be to render complete justice between the parties and further if the

allegation made raises issues of public importance it should be tested, even if the allegation is nothing but a mere propaganda stunt inasmuch as the confidence in the electoral machinery should not be allowed to be impaired. Though secrecy of ballot is important, doing justice being more important the Court allowed the order to stand.

In the present case, the principal allegation made by the petitioner is that 2,00,000 to 2,50,000 ballots have been printed in excess of the requirement and such ballot papers have been utilised in rigging the election, as stated earlier, either at the time of polling or at the time of mustering or demustering or at the time of final counting.

So far as the first two allegations are concerned, it has been demonstrated that such a thing has not occurred at all. In the first instance there is no printing of 2 lakh or 2,50,000 excess ballot papers as alleged by the petitioners. There is hardly any material placed before this Court to show that excess ballot papers have been utilised in rigging the election as such. The pattern of voting and some samples thereto, with reference to Form 16 and Form 20 to which reference has already been made, would make it clear that there could not have been rigging as alleged by the petitioners. It is further contended that counting agents of petitioners were not allowed entry and therefore it would have been possible for rigging. When the counting agents were not present there, what happened there could not be stated by the petitioners. It is purely left to the imagination of the concerned persons, and the imagination run riot. It is stated that either ballot papers have been stuffed into the ballot boxes at the time of polling or while counting or making bundles of 50's. On the top of the bundle, a vote cast in favour of respondent-1 was placed while rest of them contained of other votes cast in favour of the petitioners in Election Petitions 6 and 2 of 1991. Some of the witnesses state that in the bundle of 50's made, first 20 to 25, cast in favour of respondent-1 were placed and rest were votes cast in favour of the petitioners in Election Petitions 2 and 6 of 1991. The pattern of evidence is not uniform. Such evidence will not in itself carry the case of the petitioner any further inasmuch as no specific allegation as to in which of the bundles such irregularity has occurred, how many bundles of such type were there and whether any complaint was made at the earliest point of time to the Returning Officer. But, such a case is set up which is only an after thought and cannot be taken into consideration particularly on mere oral evidence tendered before the Court. Apart from that, the evidence is not worth consideration because no contemporaneous material in that regard is available as to the nature of the discrepancies noted by each of the agents or any one present there. In the first place, the case set up is that they were not allowed into the counting hall, but later on when they were allowed entry into the counting hall they noticed such defects. Even so, what prevented the parties concerned from lodging a complaint then and there or to seek recounting from the Returning Officer is not made clear. It is the case of the petitioners that there was whole-sale rigging and the same is belied as pointed out by me earlier that the pattern

of voting discloses the story to the contrary. Therefore, the case set up by the petitioners in this regard cannot be accepted at all. No case is made out much less allegations are made in the petitions nor any evidence tendered before the Court to claim that there has been rigging in the election. No foundation has been laid in this case for any recount.

So, now the related question that has to be considered is whether non-admission of the counting agents of the petitioners has affected the result of the election. The version of the petitioners is that though they had fulfilled all the requirements in regard to admission of counting agents, they had not been admitted into counting halls. But, in the course of the evidence tendered on behalf of the petitioner in Election Petition 2 of 1991, some of the witnesses state that the counting agents of the petitioner had not been admitted into the counting hall because they had not produced necessary documents and that on production of such documents they were able to gain entry into the counting hall. Some other witnesses state that some of the counting agents appointed did not turn up at the counting hall and other agents had to be appointed and this process took some time. The presence or absence of the counting agents at the counting hall is not of any materiality as pointed out earlier considering the pattern of voting. In view of Section 51 of the Act, unless the petitioners can establish that counting has been irregular and the action has been duly taken, the same cannot materially affect the result of the election.

22.6 It is pointed out by the petitioners that the arrangements made in the counting hall was not correct; that in respect of each segment there was no separate hall and as far as Varthur and Yelahaaka segments are concerned the counting was done in three different halls. But the petitioners do not say in what manner each of these discrepancies has resulted in materially affecting the result of the election. Any non-compliance with the rules will not by themselves invalidate the election but only in case where the same affects the results of election materially and no such case is made out by the petitioners. It is alleged that not only persons who are authorised counting agents but also certain other persons who are supporters of respondent-1 entered the counting hall wearing official badges and posed themselves as official counting staff. In this regard the evidence tendered by the parties is oral and the testimony is tendered by the workers of the petitioner in Election Petition 2 of 1991 and on behalf of petitioner in Election Petition 6 of 1991 no witness other than herself was examined in this respect also. All that is stated is that one Noorulla Khan and Ramachandra of Cheemachanahalli were present wearing official badges in the counting hall at the time of counting the ballot papers. The first respondent's stand is that the said Noorulla Khan and Ramachandra of Cheemachanahalli were his counting agents and they were legitimately present in the counting hall and their names could be found in the registers used at the time of counting. Therefore, the question of the wearing official badges and posing as counting officials does not arise nor the case that they were sought to be sent out of the hall also would arise. While the case of

the petitioners in the pleadings is that large number of such supporters of respondent-1 had entered the counting hall, only two instances are sought to be pointed out. Either in the pleadings or in the evidence no other incident is pointed out. Therefore it is difficult to accept the case set up by the petitioners that large number of supporters of respondent-1 were present in the counting hall at the time of counting. Even in regard to the said Noorulla Khan and Ramachandra of Cheemachanahalli, material is available on record in the shape of documentary evidence. The register maintained in this regard relating to counting agents clearly indicates that they were the counting agents of respondent-1. In the circumstances, this aspect of the matter does not assume any significance so as to result in any misconduct. Further, the evidence relied upon is with reference to a newspaper report with a photograph of observers and other officials. Under Ex. P-1, which is a newspaper report, the description made does not relate to any complaint made by the petitioners in regard to wearing of badges meant for the counting staff by the counting agents of respondent-1. And it is admitted by the petitioner in Election Petition 2 of 1991 that in the newspaper there is no news report as to first respondent's counting agents wearing badges meant for the counting staff. Hence the allegation of first respondent's workers posing as counting staff wearing official badges meant for the said staff has remained an allegation without any proof.

The petitioners contention whether the metal seals were intact or not could not be asserted at all at this stage of the proceedings because even according to the petitioners their counting agents could not be present at the time of commencement of counting. If they were not present they could not verify whether the seals were intact or not. Therefore, it is not possible for them to make any averment in regard thereto. The evidence of other witnesses does not help the petitioners in any manner in this regard.

23. Subsequent to the filing of the petition and when substantial progress had been made in the connection Election Petition 2 of 1991 and when the petitioner in Election Petition 6 of 1991 was in the witness-box, an application has been made under Order VI Rule 17 of the Code of Civil Procedure for amendment of the pleadings to claim that there are discrepancies in Form 16 Parts I and II in terms of particulars furnished in Schedule A-1, B-1, C-1, D-1, E-1, F-1, G-1 and H-1 to raise another contention that there are certain discrepancies in relation to ballot papers again and in support of the contention that the ballot papers were not at all genuine and they were spurious ballot papers and details thereof are set forth in Annexure 'A' to 'J' annexed to the application. This application was filed by the petitioner in Election Petition 6 of 1991, after making an elaborate search of the various Forms 16 Parts I and II. But there are certain basic fallacies in the inference sought to be drawn. The petitioner proceeds on the basis that 'A' series ballot papers had not been printed at all nor supplied to concerned polling stations and it is on the basis of that some entries in Form 16 Parts I and

If do not refer to such numbers with the prefix 'A'. While dealing with Ex. P-75-A I have referred to the manner in which the entries have been made thereof by the concerned Assistant Returning Officers. A look at the unused ballot papers produced before the Court in excess of 10 lakhs which carry a prefix 'A' prior to the prefix number after which the number of the ballot paper makes it clear that prefix 'A' added prior to the number is not taken note of by the officers concerned and that is why in Ex. P. 75 also no reference to the same has been made in the case of Hoskote segment by the Assistant Returning Officer. If that particular discrepancy is borne in mind the difference in the accounting of the ballot papers only comes to either excess or lesser counting to the extent of 6000 votes consisting of 3000 each. When respondent 1 has succeeded in the election by a margin of over 60,000 votes I do not think this difference should be of any materiality. The petitioner seeks to draw inference on that basis. This becomes demonstrably clear with reference to the Schedule produced before the Court referred to in the I.A. For example, in Schedule 'H' the missing ballot papers as per Ex. P. 80 amount to 1,30,026. But such a question cannot arise at all with regard to Hoskote segment because the ballot papers issued there were only 'A' series ballot papers. According to petitioners, the serial numbers of the ballot papers alone should be taken note of as disclosed in Form 16 Part I without reference to any other material before the Court whether prefix 'A' is there or not and therefore if that aspect is taken into consideration I do not think the petitioners have made out any serious charge against the respondents. If there are any missing ballot papers after the ballot papers which had been issued in terms of Ex. P. 75(A) or Ex. P-80 and that in view of the finding recorded by me, there is loss of such ballot papers could have been proved by examining the officers concerned. Without examining the concerned AROs in respect of each segments under whose supervision those documents have been prepared, it is difficult to draw inference one way or the other. Considering the fact that thousands of officials were to be employed when there are 1600 polling stations and in the shortest possible time entries have to be made in the relevant papers, and when several human agencies are involved, there are bound to be mistakes. As long as they do not amount to acts of misconduct of serious nature so as to affect the franchise exercised by the voters or violation of law which affects the result of the election, I do not think the same can be taken serious note of. Therefore, the discrepancies noted in the Schedule 'U' do not carry the case of the petitioners in any manner forward. I have bestowed my attention to each one of these contentions but the same cannot be made much of.

24. Now I come to the most crucial aspect in these cases and that is in regard to the declaration of results made by the respondents and in doing so whether there is any mistake and if so whether that mistake occurred either on account of wrong counting or any other thing. Earlier I have adverted to the different figures available either in the voting statistics or the results given out to the media and sent by wireless message and the results sent to the

D.P.A.R. or what is ultimately declared in Form 21-E. The procedure in relation to declaration of election results is available under Rule 64 of the Conduct of Election Rules. In KRISHNA BALABH PRASAD SINGH vs. SUB-DIVISIONAL OFFICER AND OTHERS (AIR 1985 SC 1746) the aspect as to when the result is said to be complete has been considered by the Supreme Court in some detail in that decision. After referring to Rule of the Conduct of Election Rules it is stated that the declaration envisaged by law that a candidate has been elected is the declaration in Form 21-C or 21-D. While the declaration in Form 21-C is made in a general election, declaration in Form 21-D is made in respect of an election held to fill a casual vacancy. It is noticed that the right to vote and the right to stand as a candidate in an election and the entire procedure thereof are created and determined by the statute. Accordingly, under Section 66 of the Act the result of the election shall be declared in the manner provided in the Act or the rules made thereunder. The declaration can be effected in that manner only. The manner is clearly expressed in Rule 64 of the Conduct of Election Rules. There is no other manner. There must be a declaration in Form 21-C or Form 21-D. The announcement by the Returning Officer that the candidate concerned had been elected has no legal status because the declaration in Form 21-C should be made first. Even the grant of certificate of election in Form 22 to the party concerned cannot be of any avail to him because Rule 66 contemplates the grant of such certificate only after the candidate has been declared elected under Section 66 which refers us back to Rule 64 and therefore to Form 21-C. There must be a declaration in Form 21-C at the relevant time. The grant of certificate of election in Form 22 without there being a declaration in Form 21-C is meaningless. The process of election comes to an end only after declaration in Form 21-C is made and consequently the formalities are completed and such a course in this case has been adopted only after Form 21-E is prepared. Before preparation of Form 21-E the question of issuing Form 21-C does not arise at all.

24.1 Therefore the question that arises for consideration in this case is whether in the preparation of these forms any mistake has been committed. As per the voting statistics it is clear that the total number of votes polled were 6,20,580 while the total number of votes as per the wireless message and the information given to the media is 8,32,465. The problem that arose for consideration was as to when did the officers secure information as to 2,27,825 votes being in excess which is the difference of votes communicated by the wireless message and ultimately what is declared under Form 21-E. The case set up by respondents is that this has resulted on account of discrepancies found in the preparation of Form 20 in Shanthinagar assembly segment. Form 20 which is the final result sheet has been produced as Ex. P-18 in Election Petition 2 of 1991 and that clearly indicates at the end of each sheet after the first page the concerned Assistant Returning Officer has carried over from the previous page the number of votes secured and that is available from page 2 onwards. An analysis has been made by the learned Advocates and presented to me

and the same is reproduced here for the purpose of ready reference :—

Round No.	Votes actually counted	Figures furnished in roundwise result sheets (unrevised)	Figures entered in Form 20 Part II (unrevised)	Figures furnished in roundwise result sheet (revised)	Figures entered in Form No. 20 Part II (revised)
I	4435 (Page No. 1)	4435 (Page No. 117)	4435 (Page No. 211)	4435 (Page No. 127)	4435 (Page No. 221)
II	5089 (Page No. 2)	9524 (Page No. 118)	9524 (Page No. 212)	5089 (Page No. 128)	5089 (Page No. 222)
III	5150 (Page No. 3)	14674 (Page No. 119)	14674 (Page No. 213)	5150 (Page No. 129)	5150 (Page No. 223)
IV	5096 (Page No. 4)	19770 (Page No. 120)	19770 (Page No. 214)	5096 (Page No. 130)	5096 (Page No. 224)
V	3954 (Page No. 5)	23724 (Page No. 121)	23427 (Page No. 215)	3954 (Page No. 131)	3954 (Page No. 225)
VI	4877 (Page No. 6)	28601 (Page No. 122)	28601 (Page No. 216)	4877 (Page No. 132)	4877 (Page No. 226)
VII	3982 (Page No. 7)	32583 (Page No. 123)	32583 (Page No. 217)	3982 (Page No. 133)	3982 (Page No. 227)
VIII	5473 (Page No. 8)	38056 (Page No. 124)	38056 (Page No. 218)	5473 (Page No. 135)	5473 (Page No. 228)
IX	5652 (Page No. 9)	43708 (Page No. 125)	43708 (Page No. 219)	5652 (Page No. 134)	5652 (Page No. 229)
X	2286 (Page No. 10)	45994 (Page No. 126)	45994 (Page No. 220)	2286 (Page No. 136)	2286 (Page No. 230)
	45994	261069	261069	45994	45994
Difference between the votes actually polled and the figures as entered in the unrevised Form No. 20 Part II.					
(a) Figures as entered in the unrevised Form No. 20 Part II				2,61,069	
(b) Less : Votes actually polled				45,994	
					2,15,075

The total votes polled and the figures in relation to Shanthinagar assembly segment in Form 20 Ex. P-18 in Election Petition 2 of 1991 would come to 2,61,069 and the actual votes polled thereof would be 45,994. The difference thereof would come to about 2,15,075 and certain other discrepancies in relation to other forms would certainly make up the difference declared by the Returning Officer. In fact this exercise becomes more clear if we refer to Ex. D-3 which is also marked as Ex. P-66 in Election Petition 6 of 1991, which gives the computer print out of voting statistics. That statement contains the name of the candidate in the first column, party's name in the second column, assembly segment code and the votes polled by each candidate is indicated. A look at the computer print out with reference to Shanthinagar assembly segment (Code No. 84) would indicate the mistakes that had crept in in the counting, on account of wrong preparation of Form 20. There could not have been a mistake prior to the preparation of Form 20 is clear because addition of carry over figures from page to page by the Assistant Returning Officer in Shanthinagar assembly segment itself indicates the discrepancy thereof and that is reflected in the voting statistics because the voting statistics indicate the figures by which each one of the candidates had secured votes.

Respondent-1 could not have secured 3,52,047 votes while petitioner in Election Petition 2 of 1991 could not have secured 2,43,427 or petitioner in Election Petition 6 of 1991, 2,01,315 votes. A recheck up in that regard became necessary because the total number of votes polled itself did not exceed 6 lakhs and those statistics also had been furnished. According to the voting statistics available in Election Petition 6 of 1991 at Ex. P-71, which is also marked as Ex. P-106 in Election Petition 2 of 1991, the total number of votes polled is clearly indicated and that is the correct one. With reference to the figures if calculations are made 2 lakhs of votes said to have been polled in excess will not be correct. Thus, if the voting statistics even at an earlier stage of counting showed that the total number of votes was only 6 lakhs and that figure is correct, the question of more than 2 lakh voters voting in Shanthinagar would not arise at all as indicated in Ex. P-66 in Election Petition 6 of 1991 and Ex. D-3 in Election Petition 2 of 1991. Section 64 of the Act provides that at every election where a poll is taken, votes shall be counted by or under the supervision and direction of the Returning Officer and each contesting candidate, his election agent and his counting agents, shall have a right to be present at the time of counting.

The Conduct of Election Rules are framed under Section 169 of the Act. Rule 56(7) thereof provides that after the counting of all ballot papers contained in all the ballot boxes used in a constituency has been completed, the Returning Officer shall make the entries in a result sheet in Form 20 and announce the particulars. Form 20 called the "Final Result" requires the Returning Officer to enter therein the total number of valid votes recorded for the various candidates as also the total number of rejected ballot papers, at each round separately. The Check Memo prepared before the results of the election are entered in Form 20 and shows the votes polled by the candidates in the particular round as also the total number of rejected votes. When the distribution and counting of bundles is thus completed on all the counting tables, one round of counting is said to be over. The next round of counting will then begin and the same procedure is repeated for every round of counting so that the result of each round of counting on each table is reflected in the Check Memo relating to each round. As many Check Memos are prepared in accord with rounds of counting. These forms are not prescribed by the Act or the Rules made thereunder but under the directions of the Election Commission to facilitate the holding of fair and error-free elections and no objection can be taken to the same. I derive support to this proposition from the decision of the Supreme Court in *BANAMALI DAS-VS-RAJENDRA CHANDRA MARDARAJ HARI-CHANDAN & OTHERS* (AIR 1975 SC 1863).

If this aspect is borne in mind, each of the Form 20 prepared in respect of each assembly segment will be in the nature of Check Memos because the result of each of these will have to be carried to the final result sheet to be announced. Therefore, when it is noticed that there was an error in the final counting of votes as announced by the Returning Officer the Returning Officer rechecked the Forms 20 in respect of each of assembly segments and he found that the counting in respect of Shanthinagar assembly segment had been done by adding up of the figures at the end of each sheet and carrying it over in the next sheet and so on, resulting in a very big permutation of the numbers and thus the summation of votes in regard to Shanthinagar assembly segment was altogether far in excess of the votes polled and that error which has been rectified by the Returning Officer must be upheld.

24.2 The petitioners wanted to contend that Form 16 Parts I and II had not been furnished to the petitioners in time and therefore there was every possibility of the respondents tailoring or modifying the statistics thereof to suit the needs of the case. But it is clear that at the end of poll it is certainly open to the parties to require such forms being furnished to them and such forms could be taken. Whether in fact such exercise was done or not is not very clear for no polling agent has been examined in this case by either party. Therefore, I must draw an inference that petitioners were not deprived of Form 16 Parts I and II at the end of the poll and those forms had been available with the parties concerned and there was no difficulty for them to verify the statistics

thereof. Indeed, in respect of one of the polling stations such forms had been produced before the Court to show that Form 16 Part I has been modified. This part of the argument does not appeal to me because the total number of votes thereof as indicated in both the forms is the same. If that is so, the question of modification or tailoring being made by the concerned Assistant Returning Officers would not arise.

24.3 Another aspect of the matter that has to be borne in mind in such a case is, there are admittedly 1,600 polling stations in the constituency. Large number of officials are involved in the working with regard to the conduct of elections and all of them were manipulated to act in a particular manner to modify the forms is too tall a case to be acceptable particularly when the petitioners have failed to establish as to what particular motive the concerned officers would have had. Hence I must hold that the petitioners have not been able to establish that there has been any wrong counting or miscounting to call for recounting much less repoll as sought for.

24.4 The petitioners also have urged that in the preparation of Part II of Form 16 there has been certain mistakes and Form 16 Part II itself has been replaced and they had not been duly catered on the reverse of Part I of Form 16 which was actually meant for it. All these arguments do not appeal to me at all because even if there are defects in the preparation of those forms unless specific errors are pointed out in relation thereto I do not think this Court can sit in a fishing or roving enquiry by holding a detailed audit of the entire election process. Such an exercise is not open to the petitioners at all. If no case can be made out by the petitioners for recount, much less a case can be made out repoll.

24.5 Undoubtedly, there is frenzy and fury in the matter of conduct of election campaign but to carry the same even after the election is over as if there has been a relapse of election fever is too much to ask for. When the process of election itself involves great botheration and enormous expenses to the State exchequer and a good deal of official machinery is involved in the process of election, unless strong grounds are made out no election can be upset. I do not think in this case such grounds are made out except that there has been some mistakes in the matter of declaration of results by the Returning Officer which I have demonstrated have been satisfactorily explained. When the whole case built up by the petitioners that two and a half lakhs of ballot papers had been printed in excess falls to the ground, their claim that one set of ballot papers had been reprinted to the extent of 3,78,000 and distributed by the Assistant Returning Officers and by the concerned Assistant Returning Officers once again is allowing the imagination to run riot. May be there are some reasons for the petitioners to suspect so. There may be some mistakes or errors somewhere particularly when the Returning Officer declared three sets of results, one to the media and wireless, the other to the DPAR and the third one in Form 21E, but on a reconciliation of all the three set of results it becomes clear that what is given out to the media and to DPAR is purely a mistake and nothing more. In that

event, I do not think the petitioners can sustain these petitions. In the circumstances, petitioners having failed on all the issues except the first issue in Election Petition 6 of 1991 and somewhat partly on the issue in relation to verification, these petitions deserve to be and are dismissed.

25. The question arises as to what costs should be allowed in these cases. In these cases more than 29 witnesses have been examined for the petitioners, more than 6,500 documents have been marked and the trial has occupied over two months and an enormous time has been spent in these matters. Considering the above I do not think that awarding of normal costs would be sufficient in these cases. Though originally I thought that a sum of Rs. 2,500 per day would be the appropriate costs in a case of this nature, on a reconsideration I am of the view

that a sum of Rs. 50,000 be payable by the petitioners to respondent-1.

26. The Registry of this Court shall communicate the substance of the decision to the Election Commission and the Speaker of the House of Parliament as soon as may be and thereafter as soon as certified copy is available send an authenticated copy of the decision.

27. Petitions are dismissed with costs. The petition in each of the petitions is liable to pay a sum of Rs. 25,000 each as costs to respondent-1.

Sd/- (Illegible)

Assistant Registrar

High Court of Karnataka

Bangalore

